

\*\*\*\*\*

**COMMISSION MEETING  
THURSDAY, JULY 13, 2000  
DRAFT MINUTES**

**Chair McLaughlin** called the meeting to order at 10:00 a.m., at the West Coast Bellevue Hotel. She introduced the following attendees:

**MEMBERS PRESENT:**

**LIZ McLaughlin, Chairperson;  
COMMISSIONER MARSHALL FORREST;  
COMMISSIONER GEORGE ORR; and  
SENATOR MARGARTIA PRENTICE; and  
REPRESENTATIVE JIM CLEMENTS**

**OTHERS PRESENT:**

**BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Deputy Director, Operations;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
ROBERT BERG, Assistant Director, Special Operations;  
AMY PATJENS, Manager, Communications & Legal Department;  
SHIRLEY CORBETT, Executive Assistant**

**CHARITABLE/NONPROFIT NET RETURN WORKSHOP**

**A History of Prize Pay Out and Net Return Regulation:**

**Director Bishop** stated this is a formal meeting that will be conducted in an informal manner. He advised he would be highlighting the applicable laws and that he would provide a historical review directly related to Bingo and the nonprofit organizations. He noted there are seven RCW sections specifically related to Bingo, however, only two would be discussed this morning (RCW 9.46.010). He specifically addressed a paragraph on nonprofit gaming in the declaration by the Legislature. This paragraph has two important issues having to do with an overall perspective of gambling as it relates to charitable and nonprofit organizations, and the fact that it is in the public's interest for these organizations and other persons to participate in social past times. The other and more important declaration identifies that the raising of funds for the promotion of bona fide charitable nonprofit organizations is in the public interest. In essence, that charities and nonprofits raising funds is a good thing. If they are going to use gambling they should do it the best way they possibly can.

**Director Bishop** noted the second section addresses the powers and duties of the Gambling Commission (RCW 9.46.070). Several subsections were selected for review. Subsection (1) relates to the issuing of licenses. It is important to note that the Commission can't deny a license to an otherwise qualified applicant in order to limit the number of licenses. Therefore, we can't say there are too many licenses; we're not going to issue any more licenses. If an organization is a bona fide charitable nonprofit organization, a license must be issued. They have the legal right to operate this type of gaming activity for the promotion of their services. **Commissioner Forrest** verified that even with the decline in Bingo, if a new licensee may damage two existing organizations in the area who are barely getting by, the Commission couldn't deny a license to the new organization. He asked if this could be a legitimate consideration. Director Bishop responded that there are areas in the rules which give the Commission some regulating flexibility, but issuing a license is not one of them.

**Director Bishop** said Subsection (8) and (9) of the rules address the requirement that organizations have records and reports. Subsection (9) requires that licensee's income be recorded and reported in a manner that would disclose the gross income, the amounts received from each player, the nature and value of prizes, and the fact that prizes were actually distributed. To take care of those four functions require very detailed records, and if there is any type of regulation, there must be an accounting system. Subsection (10) addresses the things that can be done to limit competition. It gives the Commission the power to regulate and establish the maximum income derived from Bingo. This requirement is discretionary so it is a power, but not a duty. If the Commission elects to limit the income an organization can make from Bingo, it must consider the nature, character and scope of the activities of the organization – what they do and how much they do and the source of all other income from the licensee. For example, whether they're receiving substantial grants, dues or other income.

**Director Bishop** said the last consideration relates to the percentage or extent Bingo income is used for charitable as distinguished from nonprofit purposes. In 1987, the Commission set the income limit at \$3.5 million. The Commission conducted a survey and collected information from licensees as to the nature and scope of the Bingo activities; where they got their money from and what kind of an organization they were (charitable or nonprofit organization as defined by the nonprofit laws). In the early 90s, the Commission passed a set of rules that required those issues to be reported. Director Bishop noted that Subsection (11) of the Commission's powers and duties allow the Commission to establish the type and scope of Bingo including, but not limited to, the amount of wagers and prizes. This is another way the Commission can regulate Bingo.

The last section of 9.46.070 relevant to Bingo regulation (Subsection 16), gives the Commission the power to establish or limit the amount of expenses paid in conjunction with Bingo. To a large degree, when we're regulating net income, we're regulating two major factors: net income, or the amount of prizes that can be paid, and the amount of expenses that can be related to Bingo. This is another discretionary section. It is not a duty. The Commission has the power to limit expenses, but is not required to do so. If the Commission elects to limit expenses, it may take into account the amount of income received and the amount of money the games would generate for charitable or nonprofit purposes absent such expenses. The Commission may also take into account other factors, including the local wage scale, and whether charitable purposes benefit from the activities.

**Representative Clements** referred to Subsection (16) and asked if it wouldn't be prudent to look at what organizations are paying in salaries, rent and so forth, especially as they come before the Commission and want relief. He believed the Commission should ask some real hard questions about their management and how they run their organization. **Director Bishop** said that although it has never been done, we have skirted the edges. At one time during the net return regulation issue, if someone was not in compliance they had to freeze all the expenses they had control over. As soon as the Commission said the organization had to freeze their expenses (no pay raises, no increase in rent, no hiring of people), because they were not in compliance, the licensees immediately said we were limiting the things that allow them to get back where they should be. **Representative Clements** believed that prior to the Commission even addressing the issue of relief, there should be something within the administrative process that addresses the finite things that would be unique to the particular not-for-profits.

**Director Bishop** said it can be done, but in the past, the Commission has elected not to because under the current regulations the Commission only gives advice. However, the sections just reviewed gives the Commission the authority to do such things, if they wish to.

**Director Bishop** addressed the history of prize pay outs, noting that prior to 1983, there were no regulations in Washington regarding prizes or net income. There were limitations on the amount of gross income and there were other regulations requiring organizations to submit a report once they went above \$300,000, but there were no specific regulations. In the early 80s, specifically from 1980-83 Bingo gross receipts grew at a clip of almost 6 percent. At the same time, net income from Bingo declined from 11.6 to 7.3 percent. At that point in time, we witnessed what was commonly known as the "Spokane Prize Wars." There was a very competitive market in Spokane and some very aggressive organizations were going after the market by boosting prizes to a point where some organizations were actually giving away more prizes than they were taking in. That prompted complaints, which got the Commission involved. There was an emergency rule passed in April 1983 that limited the prize pay out that could be paid. There was also a licensee and staff Study Committee formed to review the whole issue. The emergency rule was extended twice. In the first part of 1984, a permanent rule was put into place. The committee noted the "target" should be the amount of money that was coming from Bingo to benefit the charities, rather than the amount of prizes that were paid out. The permanent rule included both annual and quarterly prize pay out limitations as well as net income requirements.

The initial rules started limitation at the Class F level (over \$500,000). They could pay out a maximum of 80 percent for prizes, and it decreased to 70 percent for the highest class of license. The rule required the Commission to continually monitor this issue and that an annual review of the rules take place. This precipitated continuing the Bingo Study Committee during 1984 and 1985. It was basically the same rule with some modifications. In 1985 there was a change to the rule. In 1988, some of the larger games started bumping up against the \$3.5 million income limit. The Commissioners had concerns and the Study Committee was augmented with members of the Commission. There was another emergency rule passed that allowed organizations to go above \$3.5 million, however, they would have to donate 14 percent directly to charitable causes. Fourteen percent was the maximum rate of net income that was required. This resulted in more studies, and in 1989 four new license classes were added to the regulation. At that point, the requirement that the rule be annually reviewed was removed.

In 1990, Bingo was heavily regulated, however, other activities occurred at the same time – the snack bar and pull tabs were not regulated. One of the ways around the regulation was to start applying most of the expenses to those activities. The net result was there was not an increase in net income, but more licensees were in compliance, and at that point in time, some licensees were operating pull tabs at a net loss. This was hard to perceive knowing there is a guaranteed 30 percent to start with. In 1990, the Commission decided to regulate the whole activity instead of just Bingo, and the term "net income" then became "net return." Two other fairness issues came up. One was the fact that the tax rate was not the same in all jurisdictions, the other was if one was in a jurisdiction that didn't allow pull tabs and an organization couldn't use them to offset expenses, they were at a disadvantage. Credits were then allowed and the net return picked up local tax as an add-back. Part of the theory was that some good was occurring in the community from the money generated from Bingo because it was going into local tax coffers that could be used for local services. The other thing added in 1990 was that the smaller games – those below the regulation, could no longer could lose money. If one is going to operate Bingo and pay rent or wages, they must break even.

In 1993, the nonprofits went to the Legislature and asked that the Commissions duty to limit the income from Bingo or to limit the expenses from Bingo be changed to "power" – that's when the discretionary clause went into both rules. The procedures that staff used in reviewing violations and the ability to penalize a Bingo manager for prize pay out violations were added to the regulation.

In 1995, an emergency moratorium, much the same as this year was imposed. Licensees weren't able to maintain compliance. A Task Force was formed to study the issue and a report was developed. The recommendation of the Task Force resulted in an increase in the gross receipts limits because we were bumping up against the \$4 million

limit. In addition, amusement games and raffles were added to the net return pool, and there was a liberalization of promotions. We allowed coupons, birthday gifts, frequent player points, drawings, and birthday bonus games. During the liberalization of promotions a way was found to allow the presale of games and for the licensees to award gift certificates, we authorized the electronic daubers to be used in games, and approved several new games – Keno Bingo, Satellite Bingo, and Three-number Speed Bingo.

### **Current Task Force Issues:**

**Sherri Winslow**, Deputy Director, reported the purpose of the current Task Force was to study market declines and make recommendations based on current market conditions. What has changed since the last Bingo task force is the 12 tribal casinos now in operation. There were 59 commercial card rooms opened for house banked card games, there are only 55 operating today. There were significant declines in the Bingo attendance and gross receipts, those declines are continuing to occur. The Task Force held fairly regular monthly meetings in 1999 and through this year.

**Ms. Winslow** summarized the goals of the task force. The first was to project the vision of the future of gaming in Washington State. The second was to study changes in gaming to revisit the net return and the significant progress rule. They also worked on streamlining the Bingo operational rules and discussed and assisted with developing new market opportunities for Bingo games. Lastly, they collaborated on the legislative agenda. Ms. Winslow presented an overview of the task force's vision of the future of gaming. It is expected that Bingo will continue to decline due to an aging customer base and an increase in competition in the gaming environment. The decrease in charitable nonprofit gaming is also due to a decrease in discretionary family income.

**Ms. Winslow** explained the difference between net return and significant progress. Net return is the amount of net income from the gaming at a Bingo operation, plus the add-back for local tax. This is the amount of money that has to go back to the organization. Once the organization gets that money, then the significant progress rule kicks in place -- it's the amount of money that has to be spent towards the stated purpose. You have the net return, how much money the gaming operation has to make, and then the money that goes into the organization, and how much progress they make towards their stated purpose. The task force felt that it was important to look at significant progress because they thought some updating to that rule might be necessary. After several drafts, a draft rule is under review. This not a simple rule to change, but the majority of what's included in the significant progress rule is something that is necessary to maintain. The next area was streamlining the Bingo operational rules, and a rules package was before the Commission in March. The rules were passed and have been implemented.

Another area is new market opportunities. Laura Rau, our Nonprofit Coordinator, is working with licensees to develop the rules for new market opportunities for the charities. They are hoping to have a rules package in August or September, depending on how many comments the proposal receives. The Commission should expect to see a phase-in of rules throughout the year.

**Ms. Winslow** reported that a sub-committee of the Task Force was formed in 1999, to work on the legislative agenda in early 1999. This limited Commission staff involvement with the agenda, however, the task force did collaborate with the charities and nonprofits. Commission staff assisted the legislative committee with statistical information and a summary of charitable and nonprofit services was shared with the legislators.

**Representative Clements** asked if the not-for-profits were subject to the B&O tax. **Ms. Winslow** affirmed for the gambling income, and explained there is a gambling tax required for federal purposes, but only on the pull tab income. **Director Bishop** said there are some limitations; there are a few exceptions on property taxes for some of the nonprofits, but it is very limited.

**Commissioner Forrest** questioned how long Bingo would survive. **Ms. Winslow** believed we are going to continue to see some shrinkage in the number of licensees. Some will continue to decrease their volume of activity, their attendance will continue to drop, and their gross receipts will continue to drop. Whether they go out of existence will depend on what happens with the future of gaming in Washington. She believed Bingo will continue, but expected fewer operations. **Director Bishop** shared some trends. In 1990, there were 520 licenses, now there are a little over 300. "Will it ever go away? Probably not, but it will be tougher and tougher to be successful." There will probably always be a few large games, but because of the constraints, there won't be very many little games. Commissioner Forrest commented this was going to be less and less a significant source of support for the charitable and nonprofit activities. **Representative Clements** asked who would pick up the needs and where is the monetary shift as we lose the valuable services in the community that have been provided by the charitable and nonprofit organizations. Is there a general fund revenue, is there local community support coming in to backfill? He asked if any research has been done in that area. Ms. Winslow responded in the negative. Representative Clements pointed out that his staff will probably have their own task force. Director Bishop said the burden will shift to state and local governments. In some cases the service that has been provided actually has gone away, or it has had to cut their services. **Commissioner Orr** believed that it was appropriate for Representative Clements' staff to check on this issue.

### **How We Regulate:**

**Monty Harmon**, Manager, Financial Investigations Unit, advised his unit is tasked with regulating the net return and the significant progress areas. He pointed out that staff starts with the Regulatory Objective of the Commission. The regulatory objectives are: to monitor the legitimacy of the nonprofit organization, its officers, and stated purpose as they relate to the regulatory requirements and the organization's articles of incorporation and bylaws filed with the Commission (on their application). The agency also monitors the reasonableness of wages and compensation that are paid relative to the conduct of the activity and the use of the funds (RCW 9.46.0209) to ensure they go for the promotion of bona fide charitable or nonprofit purposes. He highlighted the word "compensation" not necessarily just in the form of wages, but also the reasonableness of the expenses the organization pays out (any related party transactions that might occur), so they can analyze the reasonableness. There's also a separation between charitable and nonprofit purposes – basically on the charitable side, staff is looking at the benevolent relief that would be provided. On the nonprofit side, it's been separated out for educational, athletic, church or civic type activities and are defined in the rules. Mr. Harmon said the goal of the regulatory program and the net return is to maximize the benefit to the nonprofit and charitable organizations of Washington State, and to also avoid regulatory sanctions through training and education of the licensees.

**Senator Margarita Prentice** addressed the reasonableness of wages and compensations and noted that whether something is reasonable is very subjective. Senator Prentice asked how staff approaches this issue. **Mr. Harmon** said it's not easy; one of the unique aspects of the Gambling Commission is while there is certification by the federal government as to a nonprofit charitable organization, they're rarely able to go out and see exactly what the organization is doing. It's very difficult in the area of related party transactions if transactions do not go through an independent board. Requiring an independent board of directors helps the Commission regulate the reasonableness of compensation, but for the Commission to actually pursue charges and an administrative action has been very difficult. Usually, there's more than one way to approach a problem and it has been his experience that they try to go another direction with it.

**Representative Clements** asked if a not-for-profit organization would come under the requirements like the Commission has for travel per diem, or are they free to decide on their own autonomy what they pay people. He said there is a question of what is reasonable, and he believed there should be some standard by which they're held to a higher glowing light if they want relief. **Mr. Harmon** said the standards staff looks to for per diem are the federal amounts. If an organization exceeds what's allowed. Staff tries to get a handle on it, but again, it's a judgment call. **Ms. Winslow** noted there are a few other WACs that cover misuse of proceeds and unnecessary expenditures. If it

was found that expenditures were significantly high in a particular area for travel and entertainment, staff would call the organization to task and they have done that in the past. Mr. Harmon affirmed that staff would take such an issue to an exit conference where a board member is present, and then the board could address the issue later. **Commissioner Orr** suggested that staff make it public knowledge that they compare per diem rates, and that they're scrutinizing with state rates, federal rates, corporate rates, and labor union rates. Mr. Harmon acknowledged the concerns and affirmed that staff is working on them. Mr. Harmon noted that generally speaking, we have good organizations with responsive boards and the system is in check. Commissioner Orr did not doubt that that is happening, but felt it was important that it be articulated to not only the constituency, but also the people who don't like what the Commission is doing, and have it common knowledge that we don't allow this kind of abuse. **Director Bishop** concurred it is a very subjective area. He recalled discussions in the past regarding wages and the comparison then were to other corporations. Usually there were some incentives, and so, using the net return as a guideline, they would say that as long as they're meeting the standard of net return in regard to their gambling, then whatever they pay their executives is up to their board or their management employees. The problem starts when they're not making the standard. Does the standard need to be changed? Director Bishop believed so.

**Commissioner Forrest** noted the Commission ought to also be aware of the substantial amount of public support the organization may have in their community. There's not only the discipline of the gambling, there's also the discipline of public support. He believed that if organizations started sending their executives on big sprees, their local support would evaporate; they wouldn't exist. There is some informal monitoring from the people who are supporting these activities – both the volunteers and the people that are contributing financially to support. **Mr. Harmon** affirmed the benefit is that the nonprofits that have a gambling license do undergo greater scrutiny and training as a result of the Commission's policies.

**Mr. Harmon** referred to an overhead regarding specialized training as industry area and licensees' circumstances change. The graph depicted the Yakama area where there are four licensees who are in a very competitive market. The overhead showed the net return for the third quarter of 1998 for those licensees and Mr. Harmon pointed to a major dip. In June of 1998, the Yakama Tribe opened up their casino and a house-banked facility with five tables also opened. **Commissioner Orr** asked if there would be a way to come up with the same study showing how any casino opening (not just the tribal casinos) affects the rest of the casinos and the community. He asked what normal competition does to the rest of the industry in that community? Would any casino opening up have the same impact as tribal casinos opening up in the area? **Director Bishop** said that there were many other issues in the Yakama area, not only did the Yakama casino open, but the Yakama casino included a major Bingo game that hadn't been there before. Commissioner Orr understood, but stated he would like to see what the industry takes away from each other, not withstanding who owns it. Director Bishop said staff is ill prepared to go into that type of economic evaluation. He said they can look at it and make generalities, but he cautioned against drawing immediate conclusions. **Senator Prentice** pointed out that regardless of whether the competition is tribal or clubs like Freddie's, people are going to be curious. They will go and see what is new and different and then eventually return to their old clubs where it feels more comfortable. That is why the graph shows bounce-back after the initial flurry of excitement. She believed there will be a constant ebb and flow of interest. **Chair McLaughlin** affirmed that the personality of the casino is a very important part of the whole thing.

**Representative Clements** said the not-for-profits are basically allowed to function under the Gambling Commission license in which a certain number of dollars go back for charitable or other purposes as designed. Prior to a dip, regardless of what community you are in and the variances that cause it, a number of dollars were going for needy women, or homeless children. **Chair McLaughlin** pointed out that one of the reasons for the Compact's two percent requirement is so monies go to the community and the charitable tables. **Mr. Harmon** affirmed that staff conducts an annual review of each of the licensees and they can see, at least on an organizational basis, the difference from one year to the next, but they do not have a corporate analysis available as far as the community is concerned.

**Mr. Harmon** addressed another regulatory activity; management issues. Based on an individual agent's experience at other halls and with other organizations, staff will share information on what they have seen in other halls to provide ideas about changes the organization might want to make. Initially, it might be prize pay out consultations and talking about game analysis procedures. There would also be customer service issues such as how to treat the customers or to make sure you have good callers. The agents also review the adequacy of the Bingo facility and its layout. They also review the expenses and how the licensee allocates those expenses, so the quarterly activity reports they send to the Commission are accurate and fair to the organization. The amounts reported to the Commission by the licensees are reviewed by staff and are determinations made if the amounts are reasonable and they are compared with prior quarters. The Class D and above licensees report on a quarterly basis. Staff makes sure they haven't exceeded their license class limit, and they assess their net return percentage to ensure that they'll have compliance at the end of the year. The net return percentages range from 2 percent for a Class E, which is \$500,000 in gross receipts compared to a Class M which is 16 percent. The percentage of return to the organization is supposed to increase as the gross amount increases and that's due to economies of scale with fixed expenses being spread out over the higher gross receipts. The occupancy cost is a fixed expense. These types of things are all considered fixed expenses.

**Mr. Harmon** pointed out that the net return includes all activities conducted in conjunction with the Bingo, which includes the snack bar, pull tab activity and any raffles. The local taxes are added back as well as any building rental credits. After the net return is computed, then staff compares what percentage that amount is to the total sales. There are established percentages from 2 to 16 percent that are required. With the moratorium in effect right now, there is a 5 percent grace on net return percentage requirements that has been added to the agency's regulatory efforts.

If an organization does not meet their net return by less than 1 percent, (at this point it would be less than 6 percent) the agency would send a notification letter and ask them to evaluate their operation and send a plan to the financial reporting section for review. If they are out of compliance from a 1 to 3 percent, and again, that's after the 5 percent, another notification would be sent and this time their financial plan would be reviewed by the financial investigations unit. The organization is supposed to increase the price of their Bingo cards or decrease their prizes at that point so they'd be able to meet the net return. If they are out of compliance by over 3 percent, they get another notification letter, they are supposed to freeze all of their controllable expenses, and reduce all expenses so as not to exceed 20 percent of the total gross receipts of sales. The agency does look at the net return and then if the organization is out of compliance, they are not allowed to have an upgrade of their license.

**Chair McLaughlin** called for a 5-minute break at 11:25 a.m. and reconvened the meeting at 11:30 a.m.

### **How Other States Regulate:**

**Ms. Cass-Healy**, Assistant Director, commented that the information in the net return comparison packet is a brief summary of net return comparisons from seven jurisdictions. The responses are based upon an informal survey taken of jurisdictions known to have charitable Bingo operations. She pointed out that in the United States several different approaches are taken. Some jurisdictions fund regulation through taxation of the gambling activity and others through licensee fees like Washington. Some regulate net return and others through gross receipts because they're interested in the tax dollars. In Canada, federal law allows only charitable gaming, unless it is run by the government. Bingo is allowed by independent charitable organizations that may rent space from a commercial operator or operate in their own halls. Regulation is funded primarily through tax dollars.

**Ms. Cass-Healy** reviewed each of the jurisdictions that responded to her poll. In Virginia, the Code of Virginia dictates how they regulate net return. There is a minimum percentage for charitable gaming receipts and it must be used for lawful purposes or expenses relating to the acquisition, construction, maintenance or repair of any real property involved in the operation. Basically, their percentage is based upon their annual gross receipts. If an organization fails to meet its minimum use of proceeds requirement, their permit shall be suspended or revoked

based upon the percentage deficiency. An organization may request a one-time approval to make up the deficiency and they are eligible to reapply for a permit at the end of one year if their license is actually revoked. Ms. Cass-Healy said they currently have some problems as far as regulating net return and their answer was to propose a bill this year for capping rents. This caused quite a backlash and they came up with a compromise version which allowed them to study the issue, similar to what is happening in Washington. They currently have a one-year moratorium on suspensions.

In Nebraska, nonprofits conduct Bingo in a rented facility or at their own clubs and they must have federal exempt status or be a volunteer fire department. Their statutes don't specifically say that a certain percentage of profit must be returned or remain with the organization. They do regulate the gross receipts since this is the tax base, and they do regulate the amount of allowable expenses and rents. The profit must be used for a lawful purpose.

**Ms. Cass-Healy** reported that Texas has a Bingo-enabling act which requires organizations conducting Bingo to make a disbursement to charity. Before the end of each quarter, they have to disburse not less than 35 percent of the adjusted gross receipts from the preceding quarter. They actually have to disburse those receipts every quarter to the charitable purpose. If an organization fails to meet those requirements, they have a chance to look at the previous three quarters or the year-to-date data to see if they meet the 35 percent requirement. If they don't, they can have their license revoked. **Chair McLaughlin** asked how Bingo was going in those places. **Ms. Cass-Healy** said Texas has experienced quite a decline in charitable distributions which is what they track, and there's been a decline from \$54 million in distributions from 1991 to \$40 million in 1999. They also are concerned about this issue.

**Ms. Cass Healy** said Minnesota has charitable gambling which is conducted by nonprofits that lease the halls. Statute requires a minimum amount of profit be used for lawful purposes. Essentially, 65 percent of Bingo gross profit and no more than 55 percent of gross profit from other gambling can be expended for allowable expenses. The remaining amount has to go to lawful purposes. Regulation is funded through taxation of the Bingo net receipts and their answer to the declining industry in Minnesota is to reduce the tax rates. They have done that to the tune of 15 percent in the last three years.

**Ms. Cass-Healy** noted she had three respondents in Canada. The Criminal Code of Canada states that gaming is only legal if conducted by a province or a charitable religious organization licensed by that province. In New Brunswick a minimum of 15 percent of gross sales for Bingo must be retained by the charity. The remaining 85 percent can be spent on authorized costs. It also states that the charity must be the main beneficiary of the activity and the total prize limit is \$15,000 per Bingo event. They are restricted in New Brunswick to two nights of Bingo per week. Licensed charities can operate their own hall or they can rent space from what they call commercial operators. Each rental location is restricted to four nights per week. If they fail to make their 15 percent they're put on probation and must produce a business plan as to how they will reach the minimum requirements. If they fail again, their license is canceled for at least one year. They report that there has been a slippage in total industry sales and they have been discussing the issue with the licensees.

**Ms. Cass-Healy** said that British Columbia also follows the Criminal Code of Canada and the Commission sets all regulations around minimum returns. All profits simply must be returned to charity and effective April 1, 2000, charitable distribution percentages are on a sliding scale based upon revenues and those percentages vary from 15 to 35 percent at this time. They have just gone through a significant study and some reorganizations and have adjusted the percentages just recently. In Ontario, net Bingo proceeds are split between the commercial hall operator and the charity – 40 percent to the hall operator, to a maximum of 15 percent of gross and the remainder must go to charity. The cost of prizes, license, advertising and reimbursement for members to assist with the event are deducted first. They have a very complicated regulatory framework, they say it has been very difficult to enforce. They are looking forward to working with the industry to address the decline in the receipts, to streamline the regulations, and to look at alternative ways to revitalize Bingo. Ms. Cass-Healy summarized by noting that others are suffering downturns in Bingo receipts; it's largely due to the competition and they are looking for solutions too.



## **History of Compliance & Case Processing (Since 1996):**

**Ms. Amy Patjens**, Manager, Communications and Legal Department, reviewed the history of compliance and case processing since 1996. The net return rules changed in 1996 and one of the changes was that there was a more formal process for dealing with the situation when one had a license and wasn't able to meet the net return requirements. That's where the Communications and Legal Department got involved. It's patterned after and very similar to the administrative charges' process.

**Ms. Patjens** said that originally, the agency anticipated having brief adjudicative proceedings, and those would occur if a licensee was out of compliance by more than 2 percent. They would get a Notice of Intent to Limit License Class and they would have 20 days to respond. Staff anticipated the director or his designee would hold these hearings and the licensees would be able to present why they qualified for a variance. Over the last few years, the agency ended up with about 30 cases total. The brief adjudicative proceedings anticipated didn't happen because in about a third of the cases, the licensees simply agreed to have their licenses limited. They decided to go down to that next license class with the hope of coming back a few months later and asking to have their license upgraded. They would be able to do that as long as they were able to show they could meet the net return level for the new license class they wanted.

The other third of the cases were granted variances. The agency processed those without a hearing because by the time the agency received the case and reviewed their last fiscal year, the agency had another rule that said that if you've been limited in the past but you're meeting the new net return requirement, you could upgrade. About a third of these were already meeting that higher level. It didn't make sense to make them go to a hearing requesting a variance, when in fact if they took the limitation they could come back and upgrade immediately because they were already where they had to be for the next class.

**Ms. Patjens** addressed the remaining one third of the cases. In six of the instances, the licensees closed their business. One of those later reopened with a smaller license class with no net return requirements – just a positive cash flow. A couple cases have come before the Commission in the last couple of months. In addition, there was one case in 1996, and in September 1997, the Commission heard from a licensee in the Whatcom County area that was out of compliance by more than 2 percent. They didn't even qualify to try to have a hearing with the director; they had to come to the Commission. Recently, since the moratorium, there has been a 5 percent leeway. That has significantly decreased the number of cases and there have really only been about four or five cases in the last couple of years. One option that is being discussed would be to still have a hearing, but not the variances. Licensees would still come and explain why they weren't able to meet the net return requirements. Ms. Patjens was not sure that relief would be granted as often in those hearings however, since the agency is already significantly changing the net return requirements and making them lower.

## **Changes & the Future of Gaming With Net Return Options:**

**Sherri Winslow**, Deputy Director, advised that she had previously presented a Distribution of Gross Gambling Receipts, giving the Commissioners a historical perspective of the number of licensees in the Bingo activity. She noted that from 1993 to 1999, there has been a steady decline in the number of licensees. Gross receipts have significantly declined as of fiscal year-end June 30. The decline is much more significant in 2000. More statistical information will be available in early August.

**Ms. Winslow** referred to an overhead regarding Bingo Net Income Analysis. It was a four-quarter comparison and had more recent figures on the quarterly activity for the F through M class licensees. Gross receipts have dropped fairly significantly and the licensees also correspondingly dropped their prizes paid. For the most part there were decreases in expenses. Licensees attempted to reduce their activity due to the drops in their gross income levels. Because of the continual downward trend, they looked at various solutions. The task force felt it would be most beneficial to look at a net return that would be fair to all licensees.

**Ms. Winslow** referred to a handout that showed a proposal grouping the charitable nonprofit licensees into Bands A through G. This will hopefully simplify the requirements by having fewer levels to look at. Each band will include one to two classes of licensees. The top two bands don't have licensees in them today. The calculation for the blended net return will work very similar to the federal income tax calculation table. The blended rate basically allows a lower percentage for the lower gross receipts limits so they are not having a percentage rate that's flat for all of the gross receipts. The next handout showed how many licensees are currently in each of the bands. The first band proposed would not have a net return requirement other than requiring a positive cash flow. Band B, which is Class F through G licensees, only has eight licensees as of May 31<sup>st</sup>. Band C, class levels H through I, has 17 licensees. Band D, has 18 licensees and Band E, has 7 licensees. There aren't any licensees in the remaining groups, however, there are license class levels that go up that high. Staff expects some licensees may increase their gross receipts up to that limit due in part to the shrinkage in the market. Ms. Winslow noted the net return requirements won't impact the majority of the licensees; the larger licensees, however, will be impacted

**Ms. Winslow** explained the blended rate and how the calculation is made. She emphasized that the task force actually recommended this type of method. The licensees felt it is the fairer method for all license levels. Bingo gross receipts have a starting bracket and an ending bracket. The Bingo gross receipts for a particular licensee identifies what band they would fall in, and what their starting and ending bracket would be. There is a base amount for each band, which is the minimum net return required for that particular band. Then the blended rate calculation is calculated at the higher rate or the incremental rate on the rest of the income in that band. Ms. Winslow demonstrated the calculation. An organization has Bingo gross receipts of \$2, 875,000. That makes them fall in Band D, which has a base amount, a minimum net return amount of \$120,000. Calculate the incremental amount by taking the gross receipts and subtracting the starting bracket amount of \$2,501,000. The incremental difference is multiplied times your blended rate percentage for that band which is 9 percent. When these two amounts are added together, it comes up to \$153,750 – which is the net return amount or the amount of income that the gambling operation has to return to the organization. It is important to understand what the effective rate or the actual requirement to the organization is by taking the net return amount of \$153,750 and dividing that by the gross receipts of \$2,875,000 -- which shows the effective net return amount of 5.35 percent, which is lower than the current 9 percent.

**Ms. Winslow** gave some illustrative examples of how this would work for licensees in the various license levels from Class H through M class levels. The effective net return steadily increases as the Bingo gross receipts increases, but the proposed blended rates lower the percentage significantly. At the lower end, the net return requirement is 4.01 percent, which is relatively low considering local taxes are added back.

**Ms Winslow** offered sanctions strongly recommended by the task force to consider at all license class levels. They suggested that if there is a negative cash flow (for a year or a shorter period of time) that the Commission look at some form of penalty with a recommendation of closure. Bands B through G could have various options; recommendations were made for a reduction of pay out and a limitation on other expenses. If someone is out of compliance for a period of a year, it was recommended to drop them back to the band that's the next level down; with other considerations regarding price pay out limits, wage limits, lease limits and a gross receipts cap. The possibly of having a cap on gross receipts so that once an organization reaches a certain level, the income past that levels goes to other charities in that marketplace was also suggested.

### **Guest Speakers:**

**Ms. Winslow** noted three speakers from outside the agency were invited to provide presentations because of their knowledge in this particular area. **Don Kaufman**, Big Brothers/Big Sisters in Spokane, will present potential concerns in this particular area. Mr. Kaufman serves on the task force members and has participated on previous task forces. **John Beadle**, Seattle Junior Hockey, also serves on the task force and on prior task forces. He will provide some solutions and possible ways to turn the net return issues around. **Bob Tull**, former Commissioner, is very involved with net return issues.

Potential Concerns:

**Don Kaufman** addressed issues that came up during the presentation. He advised the industry has been aware of salary issues and his Association has conducted two salary surveys, three years apart. They provided that information to the Commission. He affirmed they were concerned with those issues as well. Regarding the per diem issue, Mr. Kaufman advised he receives \$35 per day to cover his food costs.

Over the last 10 to 15 years, Bingo and charitable gaming has added Bonanza Bingo, Mark Your Own, Progressive or Step-Up Pull Tabs and Satellite Bingo. They have also been given Keno Bingo, which they are finding few people using. Electronic daubers were added and that has been a benefit because it brought in more dollars per spend, per player. The Legislature also provided a tax reduction which was greatly appreciated.

In the last 10 to 15 years the industry experienced Washington Blackjack, House Banked Blackjack, the removal of stimulant requirements, off-track paramutuals (which includes instate gambling as well as out-of-state gambling so they can now bet on paramutual betting from all over the country), and Progressive or Step-Up Pull Tabs. The Washington State Lottery has expanded their program and there's been a huge expansion in their activities. On the tribal side, they are running the Lotto and Keno, as well as all the table games. Mr. Kaufman said that in eastern Washington they are competing with slot machines. Oregon has machine gaming, British Columbia has machine gaming as well as full-size casinos and Idaho is competing with machines. This is a sampling of what charities have seen come their way and what their competition has been.

**Mr. Kaufman** noted there's been a 17.3 percent drop in the number of licensees, and if we look at the top ten attendance, it's off 27 percent. If one puts numbers to those, it's 50,000 people. If you look at the top ten as a combined group, they're off 310,000 plays from 1994. While larger games are expected to return a larger net return because they have a bigger responsibility, they also have a tougher job in a declining market. There's a harder nut to crack to break even to get to net return. That is one of the reasons for the blended rate suggestion -- to help cover the base expenses that operate. Looking at the top ten impact, their net return is off 3.7 percent from 1994 to 1999, whereas the industry as a whole and net return is off 1.6 percent. Top games have taken the biggest hit in this environment. Mr. Kaufman emphasized that during that period of time, inflation impacted everyone between 11 and 14 percent from '94 to '99. Not only are you getting a declining environment, and losing income, but your expenses are going up and so is the pay out structure.

**Mr. Kaufman** offered his opinion that attendance will continue to drop based on the fact that the industry won't receive any enhancement in their competitiveness in relationship to tribal and commercial activities. He believed there will be a continued drop in attendance, outside competition and inflation will negatively impact net returns and that we will see facilities maintenance and upkeep start to drop. People will not have the money to put back into their facilities. More games will close. Nonprofits will replace revenues by competing for charitable donations, special events, and grants with other nonprofits. Pay outs will continue to rise and games may try switching days which will probably throw local markets into chaos. This hasn't happened, but Mr. Kaufman believed that before the games quit, it will and it won't be a pretty structure. Mr. Kaufman affirmed this type of environment has been tough on the staffing situation.

**Mr. Kaufman** asked if there should be one net return standard for the whole state? He believed so, noting you must have positive cash flow for a couple of quarters to stay in business. If the agency were to go to a rate structure, the answer may not be yes. He pointed out that in 1994, their Bingo game was ranked number two in the state. By 1995 and 1996 they had dropped to three and by 1999, they dropped to number seven in the state. The top six games above them last year had an average buy for Bingo of \$49.57 per player. In eastern Washington, that buy for their game, which was the highest buy in Spokane, was \$37.51 -- which is 32 percent less that they were able to bring in per person than the west side games. If we are talking about net returns that affects everyone, we need to recognize there is a disparity from one side of the state to the other. The average attendance for top games one through six was 24,475 players. Mr. Kaufman's attendance was 26,966. He had to bring in 10 percent more players

to be competitive and although they slipped from two to seven in the process, they are still competitive. Mr. Kaufman noted that it definitely costs more to serve more and get less from those people. He said volume operations cost more money.

**Mr. Kaufman** described how his operation is impacted by machine gaming closely located. There are three organizations in Idaho, one in Bonner's Ferry, one down in Coeur d'Alene, and one in Lewiston. To the north, there's Chewelah, Grand Coulee Dam, Omak and Chelan. In Oregon, it's Pendleton. All of these are within a three to four-hour drive, some as little as 40 minutes. Additionally, two state compacted games, one in Yakima and the one in Airway Heights should be open sometime between November and February of this year. Referring to a chart, Mr. Kaufman noted the red dots represent a minimum of 4,000 machines, probably closer to six, and the two green dots will represent about 3,000 machines in the near future. In 1992, his net return including the kitchen was \$690,000; in 1999 it was \$306,000. The pay outs raised 4 percent and Pull Tabs pay outs raised 5.7 percent.

**Mr. Kaufman** said Pull Tab pay outs have been a very tough area. The industry has created higher pay out sets. As their volumes drop, he found it was to their benefit to try to create higher pay out sets so they would go through them faster. In 1992 he topped out in crowd attendance at 204,000 plays; they were at 117 last year, which is a 43 percent drop from 1992. Some people asked about the different levels of competition – it was in 1992 and 1993 when the tribal games started introducing the machines in eastern Washington and Idaho. They introduced them heavily in Idaho in 1994 and there was a flattening effect of their attendance between 1996 and 1997. They dropped 4,000 plays. They thought they were starting to flatten out and could start growing when house-banked Blackjack was introduced. They went from 145 to 129 and of course house banked Blackjack has continued to add facilities in Spokane County.

The positive note has been the dollar spend per customer. The exception being in 1998 when house banked cardrooms were brought in. It actually dropped for the first time. They went from 4480 to 4456. He hoped to see that returning in 1999. Mr. Kaufman summarized by asking – “Should there be one net return standard for the whole state” and answering “maybe not.”

#### Possible Solutions:

**John Beadle** prefaced his remarks by stating he would not belabor the topic with more statistics. He acknowledged the downtrend of revenue to nonprofits. Using the Gambling Commission's quarterly report of 12/31/99, it showed a reduction of \$2,681,000 from 1998 to 1999, compared with the other Bingo games for the previous year, and also in the Pull Tab growth comparison and reduction of \$4,600,000 from 1994 to 1999. He pointed out the reduction in the percentage of Pull Tabs of 11.9 percent and in Bingo of 12.28 percent.

**Mr. Beadle** noted the important areas are the problems faced by the staff and Gambling Commission. One area is increased competition for the gaming dollar and licensees that do not make money or will not make money in the future. The net income WAC 230.20.059 is no longer valid – that is the WAC that is being studied by the Bingo Task Force. It is tough to establish a WAC that will be equal to the current downtrend in revenue. That brings the problem of establishing a threshold for the net income. Where is the threshold? If we continue with the blended rate, and it shows that a typical hypothetical game had to make \$300,000 and it only made \$275,000, is that bad? Along with that requirement comes a penalty. The penalty is counter-productive. The penalty reduces the license class although they still have the opportunity to upgrade at a later date, but only if they can meet the new requirement. In a down turning trend, they will not make that new requirement. It is just a step into a journey to demise. Another issue is determining the type of penalty for the violation. Mr. Beadle stated that RCW 9.460.209 simply states that a licensee must be operated primarily for purposes other than the operation of gambling services. He didn't think there's anybody that believed that a game should operate if they do not make money. He believed everyone could endorse a more legally expeditious way to close them down. He acknowledged difficulties -- some establishments have long term leases, but they all know what's coming. They will be able to sub-lease, go back to the landlord, get the building up for rent, and they will be able to get out of it within a short period of time. Because of the down trend, this is a problem area that is going to become more apparent in the future.

**Mr. Beadle** asked what the WSGC can do to help and affirmed that options are extremely limited. The Commission is a regulatory body. He emphasized that the licensees appreciate having this workshop to address their concerns, but they also are very familiar with the regulatory requirement and the Commission's ability to give the licensees the things they need. Mr. Beadle recommended establishing a net income policy that is fair and equal to all licensees. He recommended establishing a penalty policy that is not counter productive and closing down licensees that do not make money; supporting future industry legislation (if the Commission agrees with it), appointing a staff person to work with the industry on future legislation; directing staff to testify favorably at legislative hearings if they agree with the bill; and authorizing the Chair to sign a letter to Governor Locke and applicable legislative representatives.

**Mr. Beadle** asked what the industry can do to help -- develop legislation that is acceptable to the WSGC and the Legislature. The WCCGA would have a major campaign to explain the proposed bill to their local legislators and solicit their support; to establish a line of communication with the Governor and explain the bill and solicit his support to not veto it if the Legislature passes the bill. Snohomish County Executive, Robert Drool has pledged 1,000 percent support behind the WCCGA bill after it is developed. The WCCGA will be discussing the bill for final proposed legislation. The future of nonprofits being viable again will rest with future legislation. The proposed legislation will allow nonprofits to use modern technology and compete more effectively. It would not expand gambling activities into new types of locations. The activity would remain closely regulated and would only benefit charitable and nonprofit organizations. The moratorium would help offset the perception of expansion of gambling activities.

**Mr. Beadle** summarized his remarks by saying that their future really rests with the Legislature. The only other alternative is the very dramatic one that the Gambling Commission set tight controls and tight net income controls. If people don't make them they get closed down; consequently, it would cut half the games in the state, and at the same time, cut the valuable community services they provide.

Miscellaneous:

**Bob Tull**, Bellingham Attorney, said he had the distinct privilege of serving on the Commission starting in the summer of 1985 until June of 1996. He said everyone has gotten all of the statistics and suggestions for future action that they can digest at the moment, so he would just fill in around a few things.

**Mr. Tull** said when he first got involved as a Commissioner, the limitation on sizes of games and those operations had just arrived. They started seeing issues and problems right away. He arrived with some biases as an attorney and as a participant in a lot of nonprofit groups. He was very concerned that people who were really good Bingo operators would become the tail that would wag the charity dog and those operators would be able to dictate to boards of directors and dictate to charities all sorts of things, including high wages and lavish benefits. The other thing he was concerned about was how easy it was for boards to overlook what's going on. Within a very short time, he became aware of the number of charity embezzlements that had taken place. Over the years there's been a steady increase in the amount of information that is sent to and provided in other ways to boards, and there has been more of an effort to make boards pay attention. It ties back to the question of are they keeping track of their operations.

One of the problems with prize pay out and net income requirements is that they really did have some valid purposes when they were installed. They were to prevent one game from cannibalizing another and they were to prevent the organization existing solely for the comfort and pleasure of the key employees. Those issues remain and they will always remain. What he learned is that if you talk about these issues candidly and bluntly with licensees and task force members, they will help you understand and will eventually help you figure out ways to make adjustments in different directions. They can't avoid their successful histories. They have been honest servants of their agencies and a great aid to this agency over the years. They are a resource this agency has drawn on in the past; the history of negotiated rule making of this agency is outstanding and the best he knows of, and he urged its continuation.

Staff will eventually have to deal with one sort of threshold question -- do you want to take a more subjective or a more objective approach to resolving these types of problems. If the Commission wants to put the burden on boards of directors of the licensee groups throughout the state, then they should say we're going to a more subjective standard. We're going to look every other year at all of these sensitive areas and we're going to be prepared to pull the plug on the people who aren't doing it right. That will send a lot of messages. Or they can say we're not prepared today to make that kind of decision; we're going to try this more objective approach and see how it goes. During the rulemaking process the Commission will get the maximum amount of licensee community involvement and support. They will get the best information and the most cooperation, so they may want to continue with a study atmosphere and look into some of these things, and then grapple with how much subjectivity or objectivity this Commission wishes to go forward with in future. We won't be able to increase attendance; we won't be able to solve all the problems, but we will be able to decide whether or not we can help the individual boards of directors head off problems -- that they get the support they need to withstand any untoward influences; that they get the help they need to look ahead and to make sure they don't overcommit.

**Mr. Tull** suggested a future step to make sure any restrictions on the operations or on the behavior of the organizations directly ties to one of the regulatory goals as they interpret in the statute. This relates to the question of whether charities should be allowed to participate either as co-locations or as even investors in card rooms.

**Chair McLaughlin** called for public comments, and there were none. She called for any other discussion.

**Senator Prentice** expressed that she would like the industry to look inward and say okay this is the market.

**Representative Clements** noted that when not-for-profit and charitable events are conducted, it's under the pretext that they're going to help a certain group or somebody in the community. His concern is that as they struggle to compete either with a casino or the card rooms, the not-for-profits want to exist without that obligation. Mr. Beadle said the nonprofits would like to exist and be able to compete effectively. There's going to be Bingo in this state regardless, it's just not going to exist as we know it today, or it will probably be half of what it is today. It's the valuable services that might be lost that is an important issue. Maybe the answer is; if you make a profit and every penny of that profit goes to a charity, you're in business. That is another consideration. **Chair McLaughlin** asked if it would be the same for everybody. Mr. Beadle said not if a threshold is established; it shouldn't be the same for everybody. The more volume, the higher the requirement.

**Director Bishop** thanked staff and guest speakers. He affirmed this is a tough issue; the issue of whether a charity makes \$5 versus \$50,000. Is making \$5 good? Rather than taking a micro approach to regulating Bingo; the Commission has taken an approach that we are looking at the overall good of the community. So far, we have not taken into account the issue of charitable versus nonprofit, but, instead saying every organization has a right to come forward and compete for Bingo dollars, the only requirement you have, is to do a good job. **Chair McLaughlin** expressed her appreciation for all the work from the staff, from the task force members, and the industry. She called for further comments and there were none. The meeting was recessed until 1:30 p.m.

At 1:35 p.m., **Chair McLaughlin** reconvened the meeting and introduced the head table. She announced a public meeting had been conducted earlier in the day on the challenges facing nonprofit charitable Bingo games in the state of Washington.

1. **NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:**

**Chair McLaughlin** announced that one of the licenses would be removed because Commissioner Orr belongs to the Association and could not vote because it would be a conflict of interest. Therefore, the Spokane Valley Fire Department Benevolent Association would be removed from the list, and hopefully the Commission would be able to vote on it Friday when there would be more than two commissioners voting.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to approve (with the one exception mentioned by the Chair) all the applications on pages 1-15 of the agenda packet. *Vote taken; the motion carried with three aye votes.*

2. **REVIEW OF FRIDAY'S AGENDA:**

**Amy Patjens**, Manager, Communications & Legal Department, noted there would be a staff report by Director Bishop for the upcoming budget. There will be three rules packages up for final action. The first two packages are rules that have been on the agenda for four months. The first are nine rules dealing with the sale and purchase of gambling equipment. This is to make sure all of the card room equipment is covered. The next rule references the sale on licensed premises only. There is a charity who wants to sell Pull Tabs to a card room that is leasing part of its premises. The third set of rules is the fund-raising events rules. They are a result of legislation passed during last session. Two rules are up for discussion and possible filing. Item #6 was discussed last month, but staff asked that it not be filed. It involves a charity who wants to purchase a house-banked card room or has submitted application to operate a house-banked card room – the rule is whether that should be allowed. There are also some alternatives. Right now the rule says that a charity could own up to 49 percent of a house-banked card room. One alternative would be that they could not do that at all if they are going to clarify that as the policy. The other option would be that a charity could own any amount of a house-banked card room if they weren't going to have any type of a restriction on it. The last rule is a petition for a rule change dealing with player-supported jackpots which has been submitted by a player. Oftentimes petitions that are submitted by licensees, but this one was submitted by a player who is not going to be able to be present.

**Commissioner Forrest** asked if there were any new considerations. **Ms. Patjens** said there is nothing new however, staff had followed up on one item under the fund-raising events. A rule was on the agenda that talked about if a licensee exceeded the \$10,000 limit which is set by law then they would have to give the extra amount away. Right now, under regular fund-raising events they can give those funds either to another charity or to the participants. One of the ideas considered was to have any additional money go to a charity – not to have it go back to the participants. There was a suggestion that charities would have a concern with that – that sometimes they would be able to use that as a marketing tool to give the money back to participants. Staff contacted Lynn Melby, the lobbyist for the Federation of Clubs, and he thought it would be fine for the money to go back to a charity as opposed to participants. Staff found that in the last five years, there's only been one fund-raising event that has exceeded the \$10,000 amount and that was only by \$127.

3. **GROUP V - QUALIFICATION REVIEWS:**

**Whatcom County Crisis Services, Bellingham**

**Robert Berg**, Assistant Director, reported that Commission staff conducted the qualification review for the fiscal year ending December 31, 1999. The organization was formed in 1979 and has been licensed by the Commission since 1983. The organization, using 15 full-time, 8 part-time, and 100 volunteers who contribute approximately 13,000 hours of volunteer time in a year provides programs that support individuals affected by domestic violence and sexual assault. The organization had a net return for the measurement period of 11.3 percent, which is below their required 14 percent net return. However, they are participating in the net return moratorium and that lowers the qualification for them to 9 percent. As such, they are in compliance. There are no pending administrative charges against the organization as of this date and staff has determined through an analysis of the records that Whatcom County Crisis Services has made significant progress towards their stated purpose. Based on staff review, it is recommended that the organization be approved as a charitable organization authorized to conduct gambling activities in the state of Washington.

**Kathleen Marshall**, Executive Director, commented their organization was one of those that would have had to cut programming if not for the moratorium. She reported they have been in existence for over 20 years and they used to operate a crisis line; that's where they actually got their name – Whatcom Crisis

Services. As a result of the declining Bingo revenue, they had to give up the 24-hour, 7-day a week crisis line and focus resources on the victims of domestic violence and sexual assault. She said they also do a batterer's treatment program. They didn't do this lightly – they did a six-month community strategic planning process to make sure this is where the community thought the resources would best be used. She noted that she has been involved with many regulatory agencies and she has never worked with a public body like the Commission and their staff. They are more open to listening to the needs and concerns of the licensee's to talking with them.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to approve Whatcom County Crisis Services of Bellingham as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

#### **Lake Washington Youth Soccer Association, Bothell**

**Robert Berg**, Assistant Director, reported that Commission staff conducted the qualification review for the fiscal year ending December 31, 1999. This organization was formed in 1973 and has been licensed by the Commission since 1990. The organization through 143 part-time employees and 1500 volunteers contributing over 200,000 volunteer hours a year provides educational opportunities to further the development of players, coaches and referees and to increase soccer playing skills. This organization did not meet its combined net return percentage of 14 percent for the Class K Bingo license; however, this organization is also participating in the net return moratorium which lowers that requirement to 9 percent. Their net return for the measurement period was 6.2 percent. This organization did submit a petition to the Commission for a waiver of their net return requirement, which was heard last month in Spokane. Commission action on June 9<sup>th</sup> authorized them to operate through January 2001 with a review at that time. Staff has determined that Lake Washington Youth Soccer Association made significant progress towards its stated objective and based on that review, staff recommends approval of Lake Washington youth Soccer Association as an athletic organization authorized to conduct gambling activities in the state of Washington.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve Lake Washington Youth Soccer Association as an athletic organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion carried with three aye votes.*

#### **4. HOUSE-BANKED CARD ROOM APPROVAL – SALE OF LICENSED BUSINESS:**

##### **Cascade Gaming LLC, d/b/a/ Royal Casino, Everett**

**Robert Berg**, Assistant Director, reported that this is a sale of an existing licensee. It is a real estate sale and purchase of assets. The request for purchase and approval is by Cascade Gaming LLC, which was formed in Washington State as a limited liability corporation on August 1, 1999. Corporate officers include Chris Keeley, Pat Muller, Robert Barnes and Louis Callibrisse. Three of these individuals, Chris Kealy, Pat Muller, and Robert Barnes are members in another LLC, which owns an existing house-banked facility in Tacoma called Tacoma Casino LLC, d/b/a Jimmy G's. Since this was only a sale issue, the financial investigations unit conducted an analysis to determine the source of funds and the license ability of the individuals involved. Staff looks for possible hidden ownerships, unreported substantial interest holders, undisclosed ownership involvement and sources of funding being used. No adverse information was uncovered and staff recommends that the license be approved. He noted that because this is an existing facility the work by their field operations division will be "as needed" once the new ownership establishes its practices. Staff reserves the right to make that inspection. There was no pre-operational review because the facility is already in operation.

**Commissioner Forrest** verified that they have a buy and sell agreement and that it has a clause, subject to the Commission's approval, and with an approval date, then the Commission will automatically transfer the



licenses. He asked what actually happens mechanically. **Mr. Berg** responded that the sale is called a contingent sale which means it is contingent upon licenseability by the Commission. Once the license is passed, the operation can continue to operate with the new owners being in place. That is why the field operations people reserve the right to go in to see how things are going under the new management. **Chair McLaughlin** asked where the finances were coming from. Mr. Berg said they are coming from the FDIC, it involves a promissory note from Key Bank and a loan from Bank of America which totals the purchase price. Chair McLaughlin called on the principals to introduce themselves.

**Frank Miller**, Attorney for Cascade Gaming LLC, said the parties have worked very hard to make this come together and it is just a matter of getting the Commission's approval today so they can go forward and close the transaction in a timely fashion. **Commissioner Orr** asked what kind of precedent will this set.

**Director Bishop** said this is way that the agency has done business or they have encouraged businesses to transact sales of licensed premises in the past. If they buy a business without the contingency, the license actually goes void the minute the transaction occurs and then the new owner would have to go through a licensing process that takes 30-60 days, which actually degrades their business. If a licensee asks, the staff will inform them that the best route is to do a contingency sale. That way they can transfer the business seamlessly. Director Bishop said a break in business really hurts. The only precedent being set with this situation is that it is the first house-banked card room transfer that has been executed. Staff has a different field operations test for those entities, but in this case, there is an agreement by the new owner that they will continue to operate under the same guidelines that were in place before and will inform the agency of any changes. They actually provided a deposit so that staff can do an inspection later to verify they have abided by their agreement. **Chair McLaughlin** asked for public comments. There were none, and the public testimony was closed.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve the license of the house-banked card room. *Vote taken: the motion carried with three aye votes.*

## 5. **HOUSE-BANKED CARD ROOM – PHASE II REVIEWS :**

### **Luciano's Casino & Waterfront Ristorante, Tacoma**

**Chair McLaughlin** asked about the fact that another state agency has made a charge that this casino is out of compliance with the Shorelines Act, whether the Commission can approve a Phase II review. **Mr. Ackerman**, Assistant Attorney General, said the short answer is yes. His understanding of what's happened at this point is that the City of Tacoma did their initial review under the Shoreline Management Act and concluded that no new shoreline management permit was required for the expansion of the card room. The Department of Ecology subsequently issued an order saying that they believe that a new shoreline management permit was required. Luciano's has appealed that determination by the DOE to the Shoreline Hearings Board and subsequently, in May or June, DOE also went ahead and issued a fine, against Luciano's which is also under appeal before the Shoreline Hearings Board. At this point the Ecology order and its fine are analogous to complaints against Luciano's. Once the appeal is taken, the order and fine is stayed pending an actual decision by the Shoreline Hearings Board, which operates in the place of a court. The decision as to whether or not Luciano's needs the permit will actually be made by the Shoreline Hearings Board even though Ecology's complaint is called an order under the Act. The permit will be made by the Shorelines Board. In terms of the lawfulness of their operation, under the Shoreline Management Act, at this point, given the stays, it was Mr. Ackerman's understanding that they are lawfully operating. As discussed at the November-December meeting, the issue really is whether or not the Commission wants to try to intrude itself into the Shoreline Management Act process and take action against the license. Since the Shoreline Hearings Board is the body that's created under the Act to make these decisions, it does not appear to be a prudent thing to do.

**Representative Wood** asked if a date has been set for the hearing. **Mr. Ackerman** said he did not know.

**Commissioner Forrest** assumed that the Shoreline Hearings Board affirmed the complaint or order, and assuming there is no further appeal, and they make a ruling that Luciano's is in violation, he questioned what the Commission would do. **Mr. Ackerman** said there is a WAC that says facilities have to be in compliance with applicable laws. His expectation would be that staff would then bring this matter before the Commission on the basis that they were operating without a required permit. Under the WAC, the Commission is authorized to revoke the license if it finds they in fact are operating without the permit. Mr. Ackerman said Luciano's could appeal to the Superior Court. If they avail themselves of the opportunity, they can get stays at each level of the process so they can continue to operate. Commissioner Forrest asked if it would be prudent to note in the Commission's approval the legality of the operation is subject to current legal proceedings and upon the termination of such that the Commission would reserve the right to review. He wanted to make sure that anyone dealing with this facility knows that the reason the Commission is approving the license is because they are still okay, although some other government agency thinks they are not in compliance. Mr. Ackerman said it was his recollection at the November-December meeting, when the owner or the representative of Luciano's was before the Commission, that the Commission gave the go-ahead at that point, but also did say on the record to that gentleman ... "that you understand that you proceed at your own peril," because Ecology was already starting to make notices that they didn't like what the city of Tacoma had done. It was Chair Ludwig who specifically made the statement that yes, we're going to give you the go-ahead, but understand that if it's determined down the road that you are out of compliance, that you do not have the necessary permit, and that the owner might be back before the Commission and its taking action to revoke the license.

**Director Bishop** noted the Commission does not have a license application before them today. What they have is an operational procedure before them to increase the betting limits. As he recalled, they already have the approval of Luciano's license on the record. **Commissioner Orr** asked if they are in fact out of compliance, whether the Commission had to re-hear their license. Director Bishop said they are entitled to due process. All they have is an alleged violation; and that this would have to be adjudicated before we would start any action. Director Bishop said if they're out of compliance, and the agency is notified by Ecology that they have found this business to be out of compliance and they ask for action against their gambling license, the agency would start the administrative process. It could eventually get before the Commission on appeal, but normally, it would be heard by an administrative law judge.

**Ms. Cass-Healy** said Luciano's Casino and Waterfront Ristorante is a commercial restaurant, lounge and card room, located in Tacoma, Washington. Luciano's Casino and Waterfront Ristorante is owned by GRK Commencement Bay Ventures, Incorporated. The ownership of that entity consists of Daniel Hilger and John Hilger, each holding 50 percent ownership interest. No member of Luciano's has an interest in any other house-banked card room. Luciano's was granted a card room license on December 9, 1998, and they began conducting house-banked games on December 28, 1999. The licensee currently operates 13 house-banked tables including eight Blackjack, two Spanish 21, one Let It Ride, one Pai Gow Poker, and one Caribbean Stud. A comprehensive review was performed by staff including a review and observation of key operating departments and a review of gaming and organizational records. The city of Tacoma was contacted to verify the licensee was current on all gambling taxes and the Tacoma Police Department was contacted to verify there had been no adverse impacts of the card room on the community. Based upon the review, staff recommends approval to operate at Phase II wagering limits.

**Senator Winsley** mentioned an article that appeared in the Tacoma News Tribune about two weeks ago indicating the business was losing money. She asked if there was any information on that issue. **Daniel Hilger**, President, affirmed they are losing money as most Phase I casinos do. Mr. Hilger believed that the Phase II limits would definitely have a positive impact.

**Mr. Hilger** affirmed there are allegations by a department in the state of Washington and Luciano's has the right to due process on those allegations. He believed they will prevail, but he appreciated the right to

continue doing his business and to go through the process that the law provides. He affirmed a hearing was held on their shoreline permit (which was denied), and all issues were overturned by the hearings examiner with the exception of the exterior of the building. It was a design issue and the permit was denied and remanded back to the City of Tacoma's land use administrator for design changes. The issue is public access, which is a shoreline issue. The hearings examiner who sits as a judge determined this facility was primarily a restaurant; the Shoreline Management Act of 1971 does not address primary accessory, which would be the card room activities. He noted that when such a situation occurs, you are directed to the zoning codes. The judge, in this case decided not only was it a good way to assess whether it was primarily a restaurant and secondly, a card room – it was the only way. Mr. Hilger again expressed appreciation for the Commission's patience. **Chair McLaughlin** called for public testimony. There were no comments, and the hearing was closed.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve Luciano's Casino to operate at Phase II wagering limits. *Vote taken; motion carried with three aye votes.*

**Aces Sports Bar & Casino, Spokane:**

**Ms. Cally Cass-Healy** reported this establishment is a commercial restaurant, lounge and card room. The business is incorporated with the primary stockholder, Michael Powers, owning 75 percent and Gerald Heggstad owning the remaining 25 percent. The licensee currently operates nine house-banked tables including one Let It Ride, one Fortune Pai Gow, two Spanish 21 and five Blackjack tables. The licensee also operates three Poker tables. The Phase II review included a review and observation of key operating departments and a review of gaming and organizational records. The city of Spokane was contacted and confirmed the licensee was current on all local gambling taxes. The Spokane Sheriff's Department has not seen significant impacts due to Ace's house-banked card room operation. Staff recommends approval to operate at Phase II wagering limits. **Gerald Heggstad** was present to answer questions. He thanked staff for the efficient review. **Chair McLaughlin** opened the issue for public testimony. There were no comments and she closed the public hearing.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve Phase II wagering limits for Aces Sports Bar and Casino. *Vote taken; motion passed with four aye votes.*

**6. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:**

**Chair McLaughlin** asked for public comments, and there were none. She asked **Commissioner Forrest** to chair the default hearings.

**7. DEFAULT HEARING – DENIAL OF APPLICATION:**

**Leonard Dawson**

**Arlene Dennistoun**, Staff Attorney, said the first default order involves Leonard Dawson. Staff recommends a default order be issued. This applicant has been denied a license by staff. A Statement of Charges was issued. Mr. Dawson was offered an opportunity to withdraw his application. He refused and requested a hearing. The hearing was held on February 14<sup>th</sup>. On that day, Mr. Dawson apparently sent a request to withdraw his original request for a hearing. Neither staff nor the Office of Administrative Hearings received that request. The hearing was held to preserve the record. After the administrative law judge issued his initial order, Mr. Dawson wrote back asking that the issue that he did not show up at the hearing be corrected. He asserted that he did not fail to show up; but rather requested to withdraw his request for the hearing. Staff is asking the Commission to issue a default order denying his license.

**Acting Chair Forrest** asked if Mr. Dawson or someone representing him was present and he was advised there was not. He asked if staff ever found out what happened to the request between January 9<sup>th</sup> and February 15<sup>th</sup>. **Ms. Dennistoun** said staff didn't receive the letter until February 15<sup>th</sup>. Commissioner Forrest asked how staff tracks the receipt of notices. Ms. Dennistoun said there is stamp dating on the receipt and envelopes with the post marks that are attached to the original letters. Normally, the legal department sends everything by certified mail, and the Office of Administrative Hearings also time and date stamps everything they receive. Acting Chair Forrest said that in effect what we are doing in this case is giving Mr. Dawson the benefit of a late notice and so it stands as a voluntary abandonment rather than a failure to appear. Ms. Dennistoun affirmed.

**Acting Chair Forrest** called for questions or comments. There were none and he called for a motion to enter a default order.

**Commissioner McLaughlin** made a motion seconded by **Commissioner Orr** to enter a default order against Mr. Leonard Dawson. The motion passed unanimously.

**8. REVOCATION DEFAULT ORDER:**

**Randy's Concession**

**Arlene Dennistoun**, Staff Attorney said Randy's Concessions is a commercial amusement game operator. The default order that staff is recommending is for a revocation of his license based on the licensee's failure to respond to an agent's request for required documents. There were several written attempts requesting documents and the licensee failed to respond. Staff attempted to contact Randy's Concession by telephone, by fax and by letter, and have not received any response from him. A Statement of Charges was issued and there was still no response. Staff tried calling all the numbers listed. There was a search made from a directory and one number was found, but it was no longer in service. As recently as mid-June, staff made other attempts to call the licensee and could not find a current number for him. He's actually based in Oregon and has a representative in Washington. Staff could not contact the representative either.

**Commissioner McLaughlin** asked if these amusement games are the types that are in places like Safeway. Ms. Dennistoun affirmed. **Director Bishop** advised these games are usually found at fairs and occasionally in parking lots. The company resides and travels around the entire west coast; he believed the defendant is out of state and he probably won't come back. **Acting Chair Forrest** asked if there were any representatives present, none came forward.

**Acting Chair Forrest** asked why they missed this information the first time and got it the second time. **Ms. Dennistoun** believed the agency had some information of past criminal history which the licensee did disclose. At the time he was licensed those criminal cases had been resolved and staff received verification that they had been resolved. Upon his license renewal, because of his previous background, another background investigation commenced and new criminal history was revealed. **Commissioner Orr** asked if trip permit violations are like load limit violations – in essence a traffic ticket. **Ms. Dennistoun** responded that it is not a traffic infraction, but rather a misdemeanor – a criminal citation. **Acting Chair Forrest** called for a motion.

**Commissioner Orr** made a motion seconded by **Commissioner McLaughlin** to issue a revocation default order. *Vote taken; the motion passed unanimously.*

**Chair McLaughlin** resumed her role as Commission Chair.

**9. STAFF REPORT:**

**Agency Request 2001 Legislation**

**Ed Fleisher**, Deputy Director, advised that it is time to start thinking about the next legislative session. Historically, the Gambling Commission, although it's not an agency directly under the control of the Governor, runs its request legislation through the Governor's Office process. Therefore, staff must have any Gambling Commission request legislation in by September. Staff will be asking the Commission for approval of requested legislation at the August meeting. At this point, staff intends to bring one bill forward; the cheating legislation submitted last year. Currently, cheating at gambling is a misdemeanor no matter the level, the amount of money, or the number of people involved. The requested change provides for three levels of cheating depending upon the number of people involved. Staff has no other proposals; if however, additional ideas are submitted staff will contact the Commissioners before next month's meeting. Mr. Fleisher asked whether there was any legislation that the Commissioners wanted staff to bring forward next month.

**Chair McLaughlin** asked if there were any Commissioner requested legislation, hearing no comments, she asked for any other public comments. There were none.

**10. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS AND LITIGATION:**

**Chair McLaughlin** called for an Executive Session at 2:36 p.m. Chair McLaughlin noted no further business would be conducted following the Executive Session, with the exception of adjourning the meeting.

**11. ADJOURNMENT:**

**Chair McLaughlin** recalled the open public meeting at 4:15 p.m. and declared the meeting adjourned until 9:30 a.m. July 14, 2000.

\*\*\*\*\*

**COMMISSION MEETING  
FRIDAY, JULY 14, 2000  
DRAFT MINUTES**

**Chair McLaughlin** called the meeting to order at 9:30 a.m., at the West Coast Bellevue Hotel. She introduced the following attendees:

**MEMBERS PRESENT:**

**CHAIR ELIZABETH MCLAUGHLIN, Chair;  
COMMISSIONER MARSHALL FORREST;  
COMMISSIONER GEORGE ORR;  
REPRESENTATIVE ALEX WOOD; and  
SENATOR SHIRLEY WINSLEY**

**OTHERS PRESENT:**

**BEN BISHOP, Executive Director;  
SHERRI WINSLOW, Deputy Director, Operations;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
ROBERT BERG, Assistant Director, Special Operations;  
AMY PATJENS, Manager, Communications & Legal Department;  
JERRY ACKERMAN, Assistant Attorney General; and  
SHIRLEY CORBETT, Executive Assistant**

**Special Presentation:**

**Director Bishop** announced that he had the honor to recognize a staff member, Neil Nunamaker, for 25 years of service, all of which have been with the Gambling Commission. Mr. Nunamaker is the longest term employee the agency has; he started as a summer intern, soon thereafter, he was hired as a permanent employee and worked through several clerical positions. In 1979 he was appointed as a gambling investigator. From 1981-1987 Mr. Nunamaker served as investigator in the southwest region working in Olympia. He was a Special Agent 5 in the special investigations unit from 1987-1991. Since 1991, he's held several executive positions within the agency including Assistant Director of Field Operations and Deputy Director. He's currently the Program Manager for our Criminal Intelligence Unit. Mr. Nunamaker has an international reputation in the criminal intelligence area. Director Bishop said it is an honor to recognize Neal Nunamaker for his 25 years and presented him with a certificate and an award which says: "In recognition of 25 years of dedicated service to the state of Washington. June 16, 2000."

1. **MINUTES – June 8<sup>th</sup> and 9th, 2000:**

**Chair McLaughlin** declared the minutes stand as read unless there were any corrections. **Director Bishop** pointed out that he was not present on Friday and asked that the minutes be amended to reflect his absence.

2. **STAFF REPORTS:**

**Preliminary 2001-2003 Budget Presentation:**

**Director Bishop** noted this is the preliminary budget presentation. It is still in draft form because the final numbers for the past fiscal year will not be available until after the July meeting. This also gives the Commissioners a chance to provide input into the budget process. He advised a final product will be presented for Commission approval at the August meeting.

**Director Bishop** explained the starting point for the current budget is the approved budget for the '99-01 biennial. The agency started the current biennium with 163.6 approved FTE's, and a \$22.7 million budget. An adjustment was made for .3 FTE's and an additional \$697,000. The \$697,000 was the result of pay raises granted to staff. Last May, a supplemental budget request was approved for 25.8 FTE's and another \$4.9 million. The largest impact of that was the result of the house-banked card rooms – a little over \$3 million and 20 FTE's. There was also 4.5 FTE's for the tribal lottery system costing an additional \$740,000. Another FTE was added for the nonprofit coordinator position.

The next adjustment had to do with the Governor's efficiency reduction and the agency was given a target of \$138,000 which was accomplished by reducing 1 FTE and associated equipment. This resulted in 187.7 FTE's and a budget of \$28.2 million. There was a carry-forward adjustment including an increase of 5 FTE's and cost were reductions of \$278,000. The FTE's added were the result of annualizing additional card room FTE's. There were only five because they were only on for part of the year; and the net result of the \$278,000 reduction had to do with one-time costs associated with adding FTE's and their equipment, and equipment that will be purchased when the agency moves their headquarters, which is anticipated in March of 2000.

Additionally, there are the maintenance adjustments, adding 6.1 FTE's and \$1.4 million. Most of this was a result of the house-banked card room program. It represents \$900,000 for salaries and benefits, \$106,000 related to differences between the programmed salary increases and the actual salary scale in place, the equipment replacement schedule of \$232,000 for replacement of vehicles and computer equipment, increased leased costs of \$80,000 because the agency will start a new lease in the Yakima office and adding a Renton location for South King County. Additional money will be spent on travel, training and special agent screening costs as a result of tribal casinos opening and the tribal agents having to travel more. Polygraph screening was added for special agent recruitment. The only other adjustment to get the agency to its maintenance level was inflation, in the amount of \$207,000. **Director Bishop** advised that for planning purposes, we are required to put it in, however, it is taken out before our budget goes through the legislative process. The end result is a maintenance level of 198.8 FTE's and \$29.6 million. This is actually the starting level for the next biennium.

**Director Bishop** addressed the requests that will be added to the budget. The first has to do with digital government. The desire is to add 1 FTE that will be working specifically to improve the Gambling Commission Web site and to make more services and information available to the public. This would allow the implementation of electronic application processes whereby applicants will be able to submit their application through the Internet. It is hoped the agency will evolve into a position of being able to receive applications and accept payments over the Net. We will also develop a scan program for forms so that at least some of our forms will be available on line. This request is \$248,000.

Other requests have to do with digital technology, titled Efficiency through Technology, for \$305,000. This is to test computer units that will replace the agent's current laptop computers and their barcode scanners; both of these will be built into one unit. It should be more efficient and less cumbersome. That's \$124,000. We also will be working on the case reporting system and updating it for approximately \$130,000. Another innovation staff will be working on will be the digital identification system for licensed employees. Currently, there are requirements that they must have an identification card, however, there is no standardization of the I.D. cards. If approved, staff would work in conjunction with the Department of Licensing and issue identification cards to all licensed employees

Overall, the budget asks for 199.8 FTE's and a little over \$30 million. After inflation is taken out, the budget will be \$29.9 million. Over the last two biennium's and the next projected biennium, the widest majority of the money will be spent on salaries, followed by benefits, and goods and services. Salaries and benefits make up 71 percent of the total budget. **Senator Winsley** asked what had been built in for salary and health care benefit increases. She noted the next legislative session will be dealing with salaries and increases for the added costs of health care benefits. Director Bishop said that there's nothing in this budget because while the agency strongly suspects there may be pay raises or health care changes, they are not allowed to put estimates into the budget. These are added at the Governor's level. Director Bishop affirmed the agency estimates where they will be at the end of next biennium, and for planning purposes projected a 3 percent change. Senator Winsley indicated that medical costs are projected to increase between 8 and 14 percent.

**Director Bishop** provided a comparison of the agency revenues and where they come from. It is anticipated there will be an 8.1 percent increase in license fees due to the addition of house-banked card rooms. I. D. stamp revenue remains level, and the reviews and investigation revenues actually show a 70 percent increase. Tribal gaming shows an increase of 1/10 of 1 percent. The reason the 99-01 numbers are high in comparison – and there's not much growth – is the fact that during the current biennium, the agency received almost all of the back payments that were due from the tribes, as well as a quarter of million dollars for the tribal lottery system start-up. There are planned increases in the tribal gaming fees equal to other fees, but for accounting purposes, it will basically remain the same. The \$527,000 for "Other" is purely an estimate and is a baseline for this biennium. The current biennium would result in \$25.8 million in revenue and the ensuing biennium would be at \$27.7 million. The license fees represent 77 percent of that figure; with the next largest category being tribal gaming at 14 percent. Punch board and Pull tabs are still by far the largest part of the license fees. There is a slight decline between the '97-'99 and the current biennium. Based on the latest forecast, Director Bishop expected a small rebound over the next biennium. If house-banked card rooms and card room employees were stacked together, the revenue would equal \$8 million; and would be the next largest category. The other items other than amusement games are all in decline. Director Bishop explained there are no fee increases planned in this budget and staff is still waiting to see the results whether I-695 is overturned.

**Director Bishop** then guided the Commissioners through the fund balance planning process. The agency expects to begin the next biennium with \$7.4 million in the fund balance, and receive revenues of \$13.6 million, giving a total of \$21 million. The agency will be spend \$15 million in the first year and end up with a fund balance of a little over \$6 million. That would equal 4.8 months of working capital. **Commissioner Forrest** asked how that money is handled; is it in a state account, does it draw interest, or is it just a paper transaction. Director Bishop said it goes through the state system and the agency has no control over it. It probably is invested and draws interest but the agency doesn't get the interest. In the second year, the agency will start with the \$6 million and receive \$14 million in revenue for a total of \$20 million. We anticipate spending \$15.1 million, ending up with a fund balance at the end of the next biennium of \$4.9 million, which is a 3.9 months working capital. **Chair McLaughlin** asked how many months of capital is optimum. **Director Bishop** responded that the agency must have three month's working capital to take care of the fluctuations in how they receive the fees. In fact, if the agency is mandated to cut back, it would



take that much money to do so. Technically, there should always be 12 months working capital because the agency collects all of the license fees in advance.

## Rules Up For Final Action

### 3. Sale and Purchase of Gambling Equipment.

**WAC 230-02-412** -Gambling equipment defined; **WAC 230-04-110** - Licensing of manufacturers; **WAC 230-04-115** - Licensing of manufacturers – Exception – Special sales permit; **WAC 230-04-120** - Licensing of distributors; **WAC 230-04-124** - Licensing of manufacturer, distributor, gambling service supplier, and linked bingo prize provider representatives; **WAC 230-04-203** - Fees – Commercial stimulant and other business organizations; **WAC 230-12-335** - Control of gambling equipment – Sales and purchases by and to licensees only – Exceptions; **WAC 230-30-212** - Punch boards, pull-tabs and related equipment may be sold with sale of business; and **WAC 230-30-213** - Sale of punch boards, pull-tabs and pull-tab dispensing devices when license revoked, expired or voluntarily surrendered.

**Amy Patjens** noted this rules package has been under discussion for four months. The package was originally proposed because staff discovered there wasn't a rule requiring licensees such as distributors to only sell card room equipment to card rooms who may legally possess it. There have always been clear requirements about this in the Pull tab area, and staff felt this should be clarified. Gambling equipment was defined in several different rules and this rules package also now defines gambling equipment in one rule. 3-A defines gambling equipment; 3-B, C, and D are more housekeeping changes than substantive. Some of the definitions from those rules were put into 3-A. Item 3-E makes it very clear that employers have to ensure that their employees who are selling equipment are properly licensed and that the employer will take all necessary steps to prevent an unlicensed person for doing so. These are the same types of requirements as for card room employees. Item 3-F is a housekeeping rule. Staff is trying to get all of the fees in one rule and found that there was one special sales permit fee that was not in that section. 3-G accomplishes why the package was started and requires that all licensees ensure that gambling equipment is only bought, sold, and possessed by authorized entities, usually licensed entities. It also explains when transfers of equipment could occur. Items 3-H and 3-I are repealers. Staff recommends final action. **Chair McLaughlin** opened the meeting to public testimony. There was none, and the public hearing was closed.

**Commissioner Orr** made a motion seconded by **Commissioner Forrest** to approve item 3-A through 3-I for the sale and purchase of gambling equipment. *Vote taken; motion carried with three aye votes.*

### 4. Sales on Licensed Premises Only.

**WAC 230-12-074** - Sales on licensed premises only – Exceptions.

**Ms. Patjens** reported this rule also has been up for four months. A charitable organization, Seattle Junior Hockey, will be leasing part of its Bingo premises to a commercial card room which plans to operate house-banked games and the charitable organization wants to be able to sell its Pull tabs to the card room patrons. The organization contacted the director several months ago and asked if this would be possible. It was felt this was a policy call and would require rule making if it was allowed, which was why the package was brought forward. Staff has worked on this rule with Seattle Junior Hockey, however, staff is neutral on the issue because it is a policy call. This rule would allow the charities to sell their pull tabs to the card room customers that were in the card room as long as certain conditions were met. Staff recommends final

action today. At the last few meetings, John Beadle has asked that the rule be effective 30 days after filing. By Commission rule, rules are usually effective two times a year, in January and July, so that staff can train other employees on how these rule changes are going to affect them. Additionally, sometimes there are licensing procedures that need to be changed. However, in this case, staff expects a very minimal amount of training, and because of that, staff is fine with the rule becoming effective 30 days after it's filed. **Chair McLaughlin** opened the meeting for public testimony.

**John Beadle**, Seattle Jr. Hockey, said he had testified previously over the last three months on this particular subject and at this point he would just request that the WAC be approved as proposed. **Chair McLaughlin** asked if there were further public testimony. There was none and the public hearing was closed.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to approve WAC 230-12-074 permitting the sale in licensed premises only with a 30-day effective date. Vote taken; motion carried with three aye votes.

## 5. **Fund-Raising Events.**

**WAC 230-02-504** - Fund-raising event defined; **WAC 230-25-030** - Fund-raising event – Ten-thousand dollars annual net receipts maximum; **WAC 230-25-040** - Fund-raising event(s) - House rules to be developed and posted – Limitations on wagers; **WAC 230-25-070** - Fund-raising events - Central accounting system required; **WAC 230-25-100** - Fund-raising events Leasing of premises of retail business- Conditions; **WAC 230-25-110** - Fund-raising event -Equipment use, lease or rental from licensee only; **WAC 230-25-120** - Limits upon amount for rent, lease or similar payments for fund-raising events; **WAC 230-25-150** - Pull-tabs at fund-raising events – Authorized; **WAC 230-25-200** - Bingo at fund-raising events; **WAC 230-25-220** - Raffles or similar drawings conducted at fund-raising events; **WAC 230-25-310** - Fund-raising event - List of workers to be available on premises; **WAC 230-25-315** - Workers to wear identification tabs; **WAC 230-25-325** - Limited fund-raising event – Merchandise prizes.

**Amy Patjens** noted this rules package is up for final action today. This is the third month that it's been on the agenda and the rules came about because of legislation that was passed during the last session. The Gambling Commission is involved with three different types of activities in this area. There are the traditional fundraising events which are put on by the charities and run by volunteers. They're an event that's decreased quite a bit over the past 10 years. Then, there are recreational gaming activities, which can be put on by various organizations – they don't have to be a nonprofit organization. An example of this type of event is where the organization brings in Blackjack tables and everyone is given scrip or fake money to play the games. At the end of the night, they take the scrip and redeem it for merchandise. The third type of event, which is what the legislation was about is the limited fund-raising events.

Under the new law, charitable organizations will now be able to hire equipment distributors and their employees to put on these fund-raising events for them. They'll only use scrip and only be able to give away merchandise prizes, not cash prizes. There are 13 rules in this package. Item 5-A is simply a definition of fund-raising events. Item 5-B deals with what happens when an organization has exceeded its \$10,000 limit in net receipts. Under law, that's how much an organization can raise on these events. There are two versions of the rule. One; if someone exceeds the \$10,000 limit with a regular fund-raising event, the excess would go back either to another charity or to the participants. If this is a limited fund-raising event, then the excess would be required to be given to another charity. Staff proposed another alternative in an effort to keep the rules consistent for the traditional fund-raising events and the limited fund-raising events; if there were any excess monies, it would go back to a charity, not to the participants. At the last meeting Don Kaufman raised some questions and suggested that staff check with the Federation of Clubs, whose lobbyist is Lynn Melby. Staff talked to Mr. Melby who felt the money should go back to another charity

versus going back to participants. Staff also found that in the last five years, there's only been one fund-raising event that exceeded the \$10,000 limit and that was only by about \$127. Staff is fine with either option. The benefit of Alternative 1 is that in that in rare occasions where the funds raised may exceed \$10,000, then the organization would still have the option of giving the money back to the participants if that is a marketing tool for them. **Chair McLaughlin** pointed out that there might be a change in how much they make with professional fund raisers running these events. **Commissioner Forrest** asked if there is any real reason to have a difference; he thought having the two events being treated the same made sense. **Ms. Patjens** affirmed that was why staff proposed the second alternative, they thought it made things simpler. However, regarding the limited fund-raising events, staff agreed the money should go to another charity because the testimony given to the legislature when this bill was being considered promoted this type of fund raiser as a method to help charities.

**Commissioner Forrest** personally favored the rule being the same for both events, and that in all cases it go to another charitable organization. That would be consistent with the overall policy which is to support charitable activities. **Commissioner Orr** and **Chair McLaughlin** agreed.

**Ms. Patjens** said that Item 5-C requires that organizations develop and post their house rules for how fund-raising events will be conducted. They have to include what the wagering limits will be. For a traditional fund-raising event, that is set at \$10. At RGA's and limited fund-raising events, there are no limits on wagers because wagers are being made with fake money. Item 5-D deals with the accounting system requirements. Any changes to the traditional fund-raising events are only word smithing; they're not substantive changes. One of the things the organization must do for the limited fund-raising events, is to explain how much of the admission fee is for scrip and how much is going to be for expenses. This would be when they're holding an RGA and where they're actually charging a fee. The other requirements are keeping monthly records, gross receipts, and prizes paid. Item 5-E deals with the leasing of commercial business premises. The new law states that the fund-raising equipment provider shall not provide the actual facility where the fund-raising event is going to occur. To be consistent with this intent, the WAC was changed to state that the equipment provider may not be compensated by the facility where the fund-raising event is being held. Item 5-F simply states where you have to get the equipment for the provider. It must be obtained from a licensed distributor or it can be obtained from another organization that is licensed to do fund-raising events; an organization may obtain their equipment from another charity. Item 5-G deals with the limits on how much can be paid when renting the equipment. Again, the purpose of the limited fund-raising event is to get funds back to the organization so they can fulfill their purpose.

**Ms. Patjens** noted that because of Commissioner Forrest's comments in May, two alternatives were developed. The first alternative is that fund-raising event licensees will make a good faith effort to ensure that the rental payments and the costs don't exceed the amount that they bring in. The other alternative was staff's original proposal which was more specific; the rental fee for the premises was set at no more than \$200 and the rental fee was set at \$400 for the first 24 hours of an event. If the organization is conducting a longer event, there were other fees. Item 5-H clarifies that Pull tabs would not be allowed at limited fund-raising events.

Items 5-I and 5-J deal with raffles or Bingo at fund-raising events. If an organization wants to do either, they would have to use scrip and award merchandize prizes instead of cash. If an event is being conducted using fake money, that is all that should be used, and not mix fake money and cash. Item 5-K requires the organization to keep a list of fund-raising equipment providers and to keep the names of the providers who are actually working the events. Item 5-L requires people who are working the events to wear a name tag so everyone will know the person is with the equipment provider versus someone with the charity. Item 5-M deals with the procedures and restrictions for limited fund-raising events. This is a new section. Right now, only members of the organization and guests can participate. There are two alternatives to this rule. One would set the guest limit at 25 percent of the attendees; and the other simply states the events are for

members and guests but does not include a specific requirement. The law passed simply says members and guests; there were no other restrictions on that.

**Ms. Patjens** highlighted the fact that there has been on-going discussion about the fees. Currently the fee for charities would be \$339 per event; and the agency is only collecting a fee from the equipment provider. Because this activity will have bookkeeping requirements, it will have to be regulated. Staff had to decide which fee this activity would best fit under since they couldn't create a new fee because of the restraints imposed by Initiative 695. If I-695 is finally deemed to be unconstitutional, staff would revisit the fee schedule and establish an appropriate fee. **Senator Winsley** asked how the \$339 amount was determined. **Ms. Patjens** responded this is a fee that was already in existence. The current \$339 rate has been achieved as increases under the 601 limitations have only been allowed by a certain percentages. **Representative Wood** believed the \$339 was established for people who use real money in their activities, this doesn't. He believed we are getting into a new area with a new fee schedule lower than should be imposed. He asked this issue be revisited when the final decision on I-695 is made. Personally, he hoped the fees would be set somewhere in the middle, if and when fee changes are allowed. **Chair McLaughlin** said the Commission would take his comments under consideration, and called for public testimony.

**Davor Gjurasic**, representative of a coalition of event companies and nonprofits that support and were the originators of this legislation, addressed the fee question. He advised that he worked closely with Representative Alex Wood, who was the prime sponsor of this legislation. He advised that he understood the ramifications of I-695. However, these are three events; one on the far spectrum, which is a casino night event used for entertainment where the event companies are charged \$54. Nonprofits, on the other end of the scale, are being charged \$339. There is also a fee charged to the event companies which is \$226 or \$571 depending on how many they do a year. He stressed that the whole premise of this legislation was to help the nonprofits any way possible. Additionally, there is a cap of \$10,000 that they can raise, and he supported giving the additional funds to another nonprofit group. Mr. Gjurasic asked that the \$339 fee assessed to the nonprofits be revisited once the I-695 issue is resolved.

**Mr. Gjurasic** supported Alternative 1 or 2 on Item 5B. The whole premise for the rule was to establish an event to raise money for nonprofits. Of the two options, he advised he would definitely choose to give any funds raised over \$10,000 at a limited fund-raising event to a nonprofit organization. In regard to Item 5G, Mr. Gjurasic supported Alternative 2, which erases the language that states "no more than \$200 for all or any portion of 24-hours." Alternative 2 implements fees for tables and rooms, and this is an open market. If the fees being charged by the event companies are too high, the nonprofits will simply not engage them. He affirmed his support of the alternative because it strikes any language dealing with how much can be charged. Regarding Item 5M, limited fund-raising events with merchandise prizes, Mr. Gjurasic supported Alternative 2. He envisioned the market for this would be for the smaller nonprofits that have an executive director and maybe an assistant and not a large staff or members. He noted that if there is a requirement that guests may not exceed 25 percent of the event participants, (which are listed as members of the nonprofit), the rule would hinder how many people could attend, and therefore hinder the amount of money that could be raised up to the \$10,000 limit.

**Lynn Melby**, Executive Vice President, Washington State Federation of Clubs, stated the private clubs have been the mainstay of fund-raising events such as casino nights and Reno nights. Over a period of years, it's dwindled to where this is almost a non-issue. The return on these activities is abysmal. This has happened over a period of time because initially, the regulations were pretty tight on who could participate in this event, and the dollar levels that could be achieved. With the advent of the tribal casinos and the public card rooms and casinos, there's not much market left. This proposed type of event, however, offers another alternative that may work. This professional help may be one solution, it may be too late, but Mr. Melby believed it was worth a try. He agreed with changing the rule about the excess funds. If, as a result of having more professional assistance on these fund-raising events, funds above the \$10,000 limit are

generated, he didn't believe there would be a problem with giving the excess receipts to another or parallel charitable organization. He affirmed the proposed rule provides the private clubs with an opportunity to make money off food and beverages, and other kinds of activities that accompany these event not necessarily directly related to gambling. Mr. Melby was interested in being able to sell pull tabs at such events and requested future discussion on the issue. He also expressed his support of the alternative for having the event open to members and guests with no limitation. Regarding the fee, he believed "zero" is a good fee, but said he would support \$349 if it could be paid in scrip.

**Mr. Gjurasic** asked to make a correction regarding his position on Item 5-G. He originally stated that he supported Alternative 2 and asked the record reflect his support for Commissioner Forrest's Alternative 1. On Item 5-B he supported the funds in excess of \$10,000 going to another licensed nonprofit or charity organization. **Director Bishop** clarified that would be Alternative 3.

**Chris Kealy** spoke as a public citizen that has participated in events, where that excess funds have been put into a drawing for the customers. He indicated there is usually pressure to donate it straight back to the charity, so in the end the charity's always received the funds. However, it didn't have to go to another charity, it went to the charity sponsoring the event. He supported the alternative allowing the organization holding the event to have a say on what they do with the extra money. **Chair McLaughlin** asked if there was a rule that gives the option of another charity or nonprofit and/or giving it back to the public in the form of a drawing. **Director Bishop** indicated there was not. He believed giving the excess to the same charity would run afoul of the \$10,000 limitation. He believed Mr. Kealy alluded to the fact that if you give the money back to the players, then the pressure is on them to "contribute" the money, which would be different than the net income issue.

**Ed Fleisher**, Deputy Director, said another confusing thing is that under the old fund-raising events, it was okay to give the money back, if that's what one chooses to do. The limited fund-raising events statute passed last year puts a limit on how much can be given out in prizes, so that option of giving the money back to the players would not be okay because there is a limit on how much the players can get.

**Representative Wood**, commented that as a prime sponsor of the legislation, it has been a real education watching this being worked on in the Legislature for two years and now being worked even further through the rule making process. Every I is dotted and everything is questioned -- the \$10,000 limit was one of the hang-ups the Legislators had and they wanted to make sure there were caps put in place. They were leery about going down this road in the first place and they will be watching the activity for the next couple of years to see how it plays out. **Chair McLaughlin** asked if there were any other comments. No one came forward and the public testimony was closed.

**Commissioner Orr** asked for a clarification of Item 5-M and their alternatives. **Ms. Patjens** advised Alternative 1 is very specific that the guests may not exceed 25 percent of the event participants and Alternative 2 has no specific membership or guest limit. She noted that staff would ask, since this is implementing legislation, that these be effective 30 days after filing. **Representative Wood** noted the original form of the legislation would have allowed anyone to walk in off the street and there were members of his committee who had problems with that and insisted that it be at least guests, and someone was to have overall control of who's coming in.

**Chair McLaughlin** asked for clarification on the two alternatives relating to Item 5-B. **Ms. Patjens** said Item 5-B deals with how the excess money is handled. In Alternative 1 if the event is a traditional fund-raising event, the excess money can be given either to another charity or to the participants. If it is a limited fund-raising event, the excess money must be given to a charity. In Alternative #2, it would make it consistent for both traditional and limited fund-raising events to give the excess funds to another charity.

Commissioner Orr made a motion seconded by Commissioner Forrest to adopt Alternative 2, that the excess money would only go to another charity or nonprofit organization. Vote taken; motion passed with three aye votes.

**Chair McLaughlin** called for a motion on Item 5-G, which pertains to not limiting the amount of rent or expenses, just that they must be less than what is made.

**Ms. Patjens** explained that Alternative 1 would be the good faith effort. Alternative 2 was the original proposal which was more specific; where the rental fees would be set at \$200 and the equipment rental fee set at \$400 for first 24-hours of an event.

Commissioner Forrest made a motion seconded by Commissioner Orr to adopt Alternative #1. Vote taken; motion passed with three aye votes.

**Chair McLaughlin** called for a motion on Item 5-M, which is the limited fund-raising event and pertains to merchandize prizes.

Commissioner Orr made a motion seconded by Commissioner Forrest to accept 5-M, Alternative #2, which allows an unlimited amount of guests. Vote taken; motion passed with three aye votes.

**Chair McLaughlin** turned their attention to the fund-raising rules as amended in B, G, and M and called for a motion.

Commissioner Forrest made a motion seconded by Commissioner Orr to approve the rules package as amended. A friendly amendment was accepted to approve the amendment within 30 days. Vote taken; motion passed with three aye vote.

## **Rules Up For Discussion and Possible Filing**

### **6. Charitable/nonprofits Owning a Commercial Gambling Establishment.**

**WAC 230-04-026** - *Ownership of a commercial gambling establishment by charitable and nonprofit organizations.*

**Amy Patjens** noted general policy discussion on this rule was conducted last month. This is in reference to a nonprofit organization that has created a for profit corporation that has submitted an application to open a house-banked card room. Discussion last month addressed whether this was allowed under the current law. Staff wanted to focus on the policy issue versus assuming that it is allowed and then focusing on a percentage of ownership. There are three options. 1) to make it clear that it's not allowed; 2) to allow it without restrictions, meaning, that a charity can create a for profit corporation and own any amount or up to 100 percent of that; and 3) to allow it with restrictions and conditions. The original proposal was to allow a nonprofit organization to own a card room, but not have more than a 49 percent interest. Alternative 1, then, would be to not allow it, but make this decision clear by rule as opposed to just having it reflected in the minutes; Alternative 2 would be allow it, but not have a restriction on the percentage of ownership.

**Chair McLaughlin** noted she had had a discussion with someone who thought the new legislation for the commercial enhanced card rooms might make it illegal to do this. **Jerry Ackerman**, Assistant Attorney General, said he was not sure about the reference. When staff looked at this issue, they tried to look at everything. They concluded that the one statutory check on this at present was RCW 9.46.120 which says, "No person who takes any part in the management or operation of any such gambling activity shall take part

in the management or operation of any gambling activity conducted by any other organization or any other branch of the same organization unless approved by the Commission.”

**Ms. Patjens** clarified the rule is up for discussion and possible filing today. **Chair McLaughlin** opened the issue for public testimony.

**Bob Ransom**, President, Cascade Youth Music Association, formerly known as the Seattle Cascade Boosters Club or Cascade Bingo, said that he is one of the requestors. His organization would like Alternative 2, where there is no limit on the amount of ownership from the nonprofit, so they could negotiate in good faith with whoever might be the other partners in this casino for whatever proportion they could get. They would like the largest proportion that they could get so more of net earnings can then go to nonprofit activities and their programs, which is the intent in the first place – to have money for their nonprofit activities and programs. Mr. Ransom supported Alternative #2 with restrictions on the percentage of ownership. The whole idea is that this is an investment to bring returns to programs. **Senator Winsley** asked where his charitable organization would get the capital to make this type of investment. **Mr. Ransom** replied they have a 20,000 square foot building of which 5,000 square feet would include the restaurant and a space of 2,500 square feet which they have submitted as a building area to the their city for tables to be approved there. The 2,500 square feet is enough room for the tables; and they would convert the restaurant and some of the bathrooms. Some of the bathrooms would still be in the Bingo side and some would be in common area because they're next to the restaurant. Senator Winsley verified their present establishment is basically Bingo and that they were not utilizing all of the building. Mr. Ransom affirmed and also noted they have investments in mutual funds they could use for their portion of the investment. He clarified that he is not saying they, as a Bingo parlor, have sufficient funds to do anything first class with a casino, but they could provide the space and upgrade the facilities in terms of restaurant, rest rooms and other things to meet building code, but amenities such as tables and extra expenses, they would have to do as part of the investment arrangement with other partners. **Senator Winsley** asked if the facility would meet the parking requirements. Mr. Ransom affirmed. **Mr. Ransom** referenced that the minutes from the June covered the issue in detail, and asked they be included as a reference.

**Nick Peck**, Silver Buckle Radio Club, Vancouver, a licensed nonprofit Bingo operation, asked for a clarification in the wording of all of these alternatives. He asked if it is the intent of the Commission or staff that these regulations should apply to all charitable and nonprofit organizations in the state of Washington, or simply to those who are already licensed Bingo operators. **Director Bishop** replied that it would apply to all nonprofit charitable organizations. **Commissioner Forrest** verified that the Commission is only saying that if you are licensed by the Commission, that's the only pretext on which we would be controlling you – that you either can or can't engage in this activity. **Mr. Ackerman** affirmed and went on to say that to be a Gambling Chapter requires people who are going to engage in gambling to be licensed by the Commission. RCW 9.46.120 says that in that situation, if you want to be involved in a second gambling enterprise, then you need the permission of the Commission and these WACs are attempting to clarify under what conditions, if at all, the Commission is going to allow this to take place. **Chair McLaughlin** pointed out that a nonprofit or charity that went through the licensing procedure for a Bingo game and was accepted, could then ask for the second license. Mr. Ackerman affirmed.

**Steve Webert**, Secretary-Treasurer of Lake Washington Youth Soccer Association, and **Robert Young**, Executive Director introduced themselves. **Mr. Webert** said they would like to suggest that Alternative 2 is an appropriate public policy decision. Over the last several years, charitable nonprofits have seen their ability to raise funds for programs aggressively eroded by marketplace shifts through enhanced card rooms and casinos. They respectfully suggested that Alternative 2 moves a step in trying to level the playing field for raising funds for nonprofit programs. **Senator Winsley** asked where this organization would get their capital investment. **Mr. Webert** said they currently have a long term lease on 27,000 square feet of space. At one point in time, they used to fill that space in their Bingo operation. Today, they probably only have a

need for half or a third of that space. Therefore, they have a lot of excess capacity in terms of commitments already made and this would effectively reduce their bingo operational costs on the one hand and it would give them opportunity for different revenue streams. Senator Winsley asked if they have money invested in mutual funds. Mr. Weibert affirmed. **Chair McLaughlin** emphasized that it is not inexpensive to put in a house-banked card room; it's more than getting tables and a space, and asked if they have the kind of capital necessary. Mr. Weibert replied that they have not conducted a full analysis, however, they are aware of the capital requirements and at this time, it would be premature for them to attempt to put that financial package together.

**Chair McLaughlin** wished the other two Commissioners were present to assist with this discussion because without their input, she was not in favor of filing. **Commissioner Forrest** said that he was in favor of moving to file. If the rule was filed, it did not mean it will be passed and he believed there will be plenty time for the other Commissioners to participate in a discussion.

**Gary Murray**, Wizards, asked for clarification that this rule would not necessarily allow a nonprofit or charitable to open a card room, but have ownership in another corporation or company that started a for profit card room. **Commissioner Forrest** indicated the concept is that there would be a operating corporation in which they'd either have a minority interest in, or one alternative that they could have a majority interest in; but that it would be a legal entity that would actually have a license so they'd be like any other licensee and have to meet the same requirements. Mr. Murray wanted to make sure this isn't about a Bingo hall that can simply add one or two tables, they have

to have a separate company operating on a separate lease and separate contract altogether. **Chair McLaughlin** and **Commissioner Forrest** affirmed that was their understanding.

**John Beadle**, Vice President of the WCCGA, advised his organization discussed this at their last meeting, and of all the operators around the state for nonprofits, no one was opposed to the nonprofits being able to have this ability to increase another area to raise funds. They did not feel this would expand gambling in the marketplace, they are just looking at the question of whether or not a nonprofit can own a private enhanced card room or a portion thereof. They would like to endorse Alternative 2. The WCCGA hoped the Commission would not consider the original version only because of the 49 percent. It would handicap them because their board of directors have a fiduciary responsibility to their members. They could not enter into a contract owning 49 percent and have no control because the person or partnership that has 51 percent normally wins. **Representative Wood** affirmed the original proposal lists the 49 percent minority and questioned the reasoning. **Ed Fleisher**, Deputy Director replied that the purpose was simply to get the discussion started on the core policy issue and not to focus on the 49 percent ownership.

**Bob Brennan** said he was in limbo. He addressed Alternative 2 and indicated that he didn't totally support Mr. Beadle's comments in reference to 49 percent ownership having no say. He explained that he has had corporations where one percent had a big say, especially when one wants to sell. In reference to charitable nonprofit organizations owning partial or an entire interest in a commercial business licensed to conduct gambling activities, he advised he has spoken on this issue in the past. He believed the salvation for some of the charities is to get involved with the so-called private enterprise. He believed that if we asked Mr. Weibert if he had the capital or resources to be able to do one of these his answer would have been yes, under different circumstances. Mr. Brennan stated that the Royal Casino had a definite interest in helping charities in the area and he believed this is the way, if the Commission agrees, for most of the charities in the future. He didn't believe it's the mini casinos or card room's fault that the revenues have deteriorated because revenues started to deteriorate five years ago, and the card rooms have only been in existence less than three years. He believed that either a joint venture or some kind of effort with the card room industry and the charities would be healthy for both. As Mr. Weibert pointed out, he has a presentation in front of him and a letter of intent signed by a certain party that would allow him to have free rent which would be a



substantial positive reflection on his bottom line. There's also a way of being able to enjoin them in the business so they can benefit and not have to put up the working capital to move forward. Mr. Brennan urged the Commission to consider Alternative 2.

**Chair McLaughlin** again asked if there were any other public comments. There being none, she closed the public hearing.

**Mr. Ackerman** asked to clarify a legal point under 9.46.050 -- three members of the Commission do constitute a quorum and most action can be taken by a majority of that quorum; however, there is a proviso in Subsection 2 that says a majority of members shall constitute a quorum of the Commission; provided, that all actions of the Commission relating to the regulation of licensing under this Chapter shall require an affirmative vote by three or more members of the Commission. This appears to him to be a matter relating to licensing. He advised that if Chair McLaughlin wants to take an official action regarding this rule, it will need to be unanimous. **Commissioner Forrest** asked if filing would require three votes. Mr. Ackerman affirmed. **Commissioner Orr** thought the issue should be tabled. **Chair McLaughlin** said she would like to have all five Commissioners here if possible to file this rule. She believed it is a very big change in gambling for Washington State. **Commissioner Forrest** said he disagreed. As far as the industry is concerned, anyone can open a mini casino if they have the money and resources. A number of charitable or nonprofits are stuck with excess space -- they have an asset of space they can't use. This is something they can put into a deal with a typical private operator to the mutual benefit of everybody, particularly if you have a long term lease and the charity is stuck with making the payments. **Commissioner Forrest** believed there would be very few cases exercising this option. It's not changing the nature of the industry; whether a new card room opened in a facility that was owned by the soccer league, the effect on the rest of the industries is going to be no different than if that building was sold and someone opened a new business. Commissioner Forrest didn't think there was any restriction on the investment policies of charities and nonprofit corporations. They can buy government bonds or they can buy Brazilian coffee futures; he believed they can do anything they want. Their concern is their status under the federal income tax law, and most significantly, their fiduciary responsibility to their membership to be prudent and careful in investing any surplus funds they may have. He didn't think there are going to be 55 charities suddenly opening mini casinos as their called, or card rooms. The principal benefit is going to be that they can be put to work in a partnership with somebody who's prepared to open and operate a card room. In view of the Commission's advice, Commissioner Forrest noted that if the Chair didn't want to file, it can't be filed today, but since there's ... **Chair McLaughlin** said she would prefer to have all five Commissioners present if possible.

**Commissioner Forrest** said he wanted to put this in context and why he doesn't see it as huge, major policy decision. He hoped the Commissioner would see that it is a rather modest way to help the charitable, nonprofit corporations who have excess space. Commissioner Forrest thought there are going to be few, if any, that are prepared to become players in a highly competitive card room environment. In any event, Commissioner Forrest hoped that in due course they could file this rule; noting it's too early to argue whether it would be good. He thought it would be a way of helping a very worthy part of their economy; he didn't see any real threat to anybody. **Chair McLaughlin** said the Commission just made a big change in allowing nonprofits to rent their extra space to a commercial card room, and she is uncomfortable moving toward another big change without everyone present. Chair McLaughlin affirmed the issue will be before the Commission for four months, however, she didn't think the public has let the nonprofits know what they think about this issue yet.

**Mr. Brennan** asked if the public hearing could be reopened for further comment. **Chair McLaughlin** said that with the permission of the other Commissioners, she would accept comments. The Commissioners concurred. Mr. Brennan asked if it was the wish of the Commission that nonprofits not enter into any other business to gain revenue. **Chair McLaughlin** said no. **Mr. Brennan** said he personally didn't see a problem with allowing nonprofits to get into this kind of business if they need to earn and bring in more

revenue. **Chair McLaughlin** responded that she thinks of this as an expansion of gambling.

**Commissioner Orr** said he appreciates what Commissioner Forrest said, but his concern is that this is the fox watching the hen house. What the Commission collectively thinks about this, may or may not reflect what the state of Washington and the citizens think. At first blush, this is an expansion of gambling. What Commissioner Forrest said is correct; it's not going to impact people. Nonprofits will benefit and that's true. Commissioner Orr believed the citizens may interpret the actions as an expansion of gambling and he was nervous about what the Commission may do. There is an expansion issue, and someone is going to see it as such, he believed the Commissioners needed to take very cautious steps in this endeavor.

**Director Bishop** appreciated and the concerns expressed and clarified this is simply filing a rule. He suggested filing all three alternatives as an option. That would put all of them on the agenda. It would not establish policy because the Commission may come out with Alternative 1, which says "You can't do it." **Chair McLaughlin** expressed her intent to decline.

**Senator Winsley** asked if it would be legal to limit this to those entities that currently have excess space. **Chair McLaughlin** said there is nothing in this that says they even have to be on the premise. Senator Winsley asked if they could put such restrictions in the rules. **Commissioner Forrest** indicated the rules could say that the investment would be limited to or had to consist of the use of space they already occupy. It would be perfectly feasible to put any kind of restrictions that seemed appropriate and specifically to the use of currently unproductive assets.

**Kent Caputo**, Lake Washington Youth Soccer Association, said he would like persuade Chair McLaughlin and Commissioner Orr to join Commissioner Forrest in starting the clock today. In terms of the policy implications of the Commissioners' decision, he suggested that rather than an expansion of gambling by this move, they would be looking at avoiding a request for expansion of gambling. Starting the consideration for this rule would allow existing gambling to continue as it is, but allow nonprofit entities who have suffered in the current market situation to begin to participate and benefit from the current gambling market as it exists. The alternative they face if this is not considered will be legislative requests from nonprofits for some type of expansion to keep them alive. The market already exists. Enhanced card rooms are already there and nonprofits are uniquely discriminated against in their inability to participate in a market that has been created. Over the last few months, the public has been allowed to perceive that for profit gaming entities are associated with nonprofits; yet we're not allowing the nonprofits to actually reap the benefits for the perception that is already starting to exist. Certainly in allowing that leased space. By stopping the clock now and not allowing this question to become a question for a real offered rule simply forestalls the ability of those nonprofits from participating in the current gambling market. **Chair McLaughlin** affirmed and stated she is just not as comfortable with it.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to file the rule. *Vote taken; one aye and two nay votes were cast. The motion failed for lack of a majority.*

**Chair McLaughlin** explained this is simply putting the issue off until the other two Commissioners have a chance to address the subject.

7. **Petition for Rule Change by Lee Taylor Regarding Player-Supported Jackpots.**  
***WAC 230-40-610 - Player-supported jackpots – Restrictions – Manner of conducting – Approval.***

**Amy Patjens** reported this is a petition. Any member of the public can submit a petition for a rule change. This one is from Lee Taylor, who is a player at different card rooms and casinos. Mr. Taylor actually contacted staff several months ago when a house-banked card room in Bellingham closed. He had put money into a player-supported jackpot and he was concerned about players receiving the funds back.

Eventually, the funds were returned to the players. She reminded the Commissioners that player-supported jackpots are separate contests a person can choose to participate in. Usually they are putting an extra dollar into the pot and there are certain rules on how that money would be won. She pointed out that the player-supported jackpots can sometimes be worth thousands of dollars. Jackpots have been from \$20 to \$30,000. Under the current rule there are two ways player-supported jackpots are distributed when a licensee closes its door or simply decides that they don't want to have a player-supported jackpot any more. One option is to give the money to the Council on Problem Gambling. When staff developed the rules, this concept was already in the context of the tribal state compacts; if they had a certain type of violation, the money would go to the Council. The Council was chosen because it's a third party as opposed to saying that the money would come back to the Commission. In the Bellingham situation, the money was eventually returned to the players, but Mr. Taylor was concerned then and remains concerned as evidenced by this petition that the funds would not always go back to the players.

Mr. Taylor's petition is very specific which is why staff is concerned. He wants the Commission to adopt a standard distribution plan which would be posted in all of the card rooms. It would require the licensee to post this 30 days before they close or 30 days before they decide to stop offering the PSJ's, and he also chose two very specific player-supported jackpots. If it was a seven-card stud PSJ, he wanted the money to go back to seven-card stud players. If it was a Texas Hold-Em PSJ, he wanted the money to go back to Texas Hold-Em Card players. Ms. Patjens was not sure why Mr. Taylor only chose these particular two types of games because there are a whole variety of other PSJ's.

**Ms. Patjens** corrected the rules summary, saying that staff impact would be minimal if passed. That is an error, there would be a substantial impact if the rule passed. It would obviously depend on how many businesses stopped doing their player-supported jackpots. Staff is concerned because they don't think that 30 days is a reasonable time period. It may be reasonable if a business is simply deciding to stop having a PSJ, but in the event of closure, the decision to close the card room might be made in a shorter period of time than 30 days. Tracking the disbursements to each type of games would be a big burden on staff. The rule would not have to be set forth as specifically as described in the petition. **Chair McLaughlin** asked if the establishment would have to document everybody's name and address every time they played at a table and if that would be a privacy infringement, as well as requiring a lot of work. **Ms. Patjens** agreed especially in light of the fact the jackpot could be won very quickly or might take months.

**Ms. Patjens** said another reason staff would not support this is because they believe the current rule works well and is more flexible. There are two options. If there isn't a way to get the money back to the players, then the establishment can give the money to the Council on Problem Gambling. If it's an employer who thinks they may reopen in the future, or they're only closing their card room and they're leaving their restaurant open, they probably want to do what's right for the general public so that they continue to get that business. The Commission has three options and those were set forth in a memo from the rules coordinator. One would be to initiate rule making. Simply file the petition for further discussion; or propose an alternative of the rule; or deny the petition. A denial must be executed in writing, stating the reasons for the denial and addressing the concerns in the petition. Staff recommends denying the petition for the reasons set forth – 30 days isn't reasonable; it would be burdensome to track this money player by player, and because the current rules adequately address the situation. Ms. Patjens said Mr. Taylor was notified of the time and place of this meeting. He called and he said he would not be able to attend, but he did hope the Commission would seriously consider his petition. **Commissioner Forrest** agreed with Chair McLaughlin. He understood the petitioner's point theoretically, but as a practical matter it isn't feasible to try and keep everybody's name and address and contact them, particularly when a business is closing up or going broke.

**Commissioner Forrest** made a motion seconded by **Commissioner Orr** to deny the petition; to refuse to file the rule, and to write a letter of explanation to the petitioner. *Vote taken; the motion passed*

unanimously.

**8. Other Business/General Discussion/ Comments from the Public**

**Chair McLaughlin** called for any other comments or business item from the public. There were none.

**9. ADJOURNMENT:**

With no further business, a motion for adjournment prevailed at 11:35 a.m.

*Minutes submitted to the Commission for approval.*

Shirley A. Corbett  
Executive Assistant